PROXIMITY JUSTICE IN RWANDA

FUNCTIONING OF THE MEDIATION COMMITTEES

(2009-2011)

Vol. 2

Study led by
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RCN Justice & Démocratie is a Belgian non-governmental organisation [NGO]. Its mission is to contribute to guaranteeing the respect of fundamental human rights by defending, more specifically, the right to justice and protecting the rights recognised by international conventions. In this context, the association is developing several activities aimed at those authorities engaged in a process of establishment or reestablishment of the rule of law and/or at the civil society.

These actions are focused on the promotion of Justice as a human value by, among other things, supporting legal systems and individuals exposed to the actions of the law, training legal actors, defending the rights of victims of crimes against Humanity, fighting impunity and perpetuating the memory of those crimes.

The association has a national and international purpose and aims at developing and extending its activities on its own or in partnership agreement, while maintaining total political independence from local or international authorities. It takes into account various models of justice in their cultural, social and political context and works on ways to align them with the fundamental rights.
Abbreviations used

JRLO  Justice, Reconciliation, Law and Order
O.G.R.R.  Official Gazette of the Republic of Rwanda

Terms in Kinyarwanda

Abunzi  Mediators. Singular: Umwunzi

Imidugudu  Villages. Singular: umudugudu.

Umudugudu  Village and the lowest administrative level.
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INTRODUCTION

RCN Justice & Démocratie has a long tradition of documentation and prospective analysis of justice-related data in Rwanda\(^1\). This research activity is conducted in parallel with and in support of activities carried out in the field. The research findings feed into the training and tools RCN Justice & Démocratie develops for its projects' target populations. It is thus also able to help identify viable solutions and best practices as an active partner in the “Justice, Reconciliation, Law and Order” (JRLO) sector, set up by the Rwandan government\(^2\).

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\(^1\) RCN Justice & Démocratie has been working in Rwanda since 1994. The organization runs other projects in the region, in Burundi and the Democratic Republic of Congo.

\(^2\) The Rwandan government and its development partners have set four general objectives (outputs) for the JRLO sector in a Sector Strategy and Budgeting Framework: 1) Universal access to quality justice 2) Genocide ideology eradicated and reconciliation mechanisms reinforced 3) Rule of law, accountability and human rights promoted 4) Safety, law and order maintained and enhanced (See “Memorandum of Understanding Between the Government of Rwanda and the Development Partners Regarding Partnership Principles for Support to the Justice, Reconciliation, Law and Order Sector”, July 2009).
The present report has been drawn up in line with this dual focus on action and research. It deals with the functioning of the mediation committees (Komite y’Abunzi) in Rwanda. Inspired by the customary mediation practices long used in Rwanda to settle local disputes, the current mediation committees were formally set up in three stages. In 2004, a first “Organic Law on organisation, jurisdiction, competence and functioning of the mediation committee” (hereafter: “mediation committee Law”)\(^3\) established mediation committees at the level of each sector (umurenge) of the country (1545 sectors\(^4\)). In 2006, a second Organic Law on mediation committees was promulgated\(^5\); the sector mediation committees were dissolved and replaced by committees made up of 12 mediators (Abunzi) at the level of each cell (akagari) in Rwanda (a total of 2150). Working as unpaid volunteers, the mediators are tasked with “mandatory mediation prior to filing cases in courts” (the Primary Courts\(^6\)); the law requires the Abunzi first to seek an amicable settlement of the dispute brought by the two parties and, failing that, to deliver a decision\(^7\).

The mediation committees are the first rung of the formal justice system (before the courts) and have the peculiarity of using, in hybrid

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\(^4\) Before the administrative reform of 2005, the sectors corresponded roughly to today's cells (a cell is made up of around ten villages (imidugudu), each of which contains a maximum of 150 houses or households).


\(^6\) There are 60 Primary Courts throughout the country.

\(^7\) “To settle the dispute submitted to them, Mediators shall seek first to conciliate the two parties. In case of non-conciliation, they take decision consciousness in all honesty and in accordance with the Laws and local customary practices provided it is not contrary to the written Law.” Article 21 (extract), Organic Law N°. 02/2010/OL of 9/6/2010 on organisation, jurisdiction, competence and functioning of the Mediation committee, in O.G.R.R. No. 24 Bis of 14 June 2010.
fashion, traditional means of conflict resolution adapted to modern law. In practice, the two parties in a dispute are very often referred to one (or more) of the informal conflict resolution bodies that exist at the community level – family councils (*inama y’umuryango*), elders (*inararibonye* or *inyangamugayo*), village committees (*komite z’imidugudu*), executive secretary of the cell – before they can submit their case to the *Abunzi*, even though there is no legal obligation for them to do so. This is not without its problems as it is now accepted that the mediators ensure easier access to justice for all citizens (their services are community based and free of charge) at the same time as helping to relieve pressure on the Primary Courts. In June 2010, a final amended of the mediation committee Law\(^8\) made several adjustments to the functioning of the mediation committees, the main change being the establishment of *Abunzi* committees at the level of the country’s 416 sectors. Since June 2010, these sector-level committees have been operating as “appeal bodies” for the decisions taken by the cell committees. It is only after appealing, where necessary, the verdict of a sector committee that litigants can refer a dispute to the Primary Court. The Law stipulates that the mediation committees may handle civil and criminal cases where the maximum amount of the claim does not exceed three million Rwandan francs (Rwf)\(^9\).

*Brief overview of RCN Justice & Démocratie initiatives in support of the Abunzi committees*

The RCN Justice & Démocratie’s focus on the *Abunzi* dates back to 2007, with the launch of an initial study on the functioning and challenges of proximity justice mechanisms in Rwanda, leading to

\(^8\) The Organic Law N°. 31/2006 of 14/08/2006 was replaced by Organic Law N°. 02/2010/ OL of 09/06/2010 on organisation, jurisdiction, competence and functioning of the Mediation Committee, in O.G.R.R. No. 24 Bis of 14 June 2010.

\(^9\) Articles 8 and 9, Organic Law N°. 02/2010/OL. For a full description of the offences that the mediation committees are competent to examine, see Appendix 3.
Functioning of the mediation committees

publication of a report two years later\textsuperscript{10}. One further study dealt with local-level land dispute resolution, with a focus on changes in customary justice practices\textsuperscript{11}. In 2010, RCN Justice & Démocratie ran joint training workshops for cell-level Abunzi and judges from 40 of the country's Primary Courts with the aim of improving the quality and coordination of dispute settlement. In parallel, from December 2009 to May 2011, the functioning of the mediation committees was closely monitored through regular and systematic data collection, resulting in the present report. The training and monitoring of the Abunzi were two components of the “Supporting Community Justice” project, funded from January 2009 to June 2011 by the Directorate-General for Development Cooperation (DGCD) of the Federal Public Service for Foreign Affairs, Foreign Trade and Development Cooperation of the Kingdom of Belgium in support of the second strategic target of the JRLO sector “High level of satisfaction with Abunzi justice”.

Monitoring of the Abunzi: objectives and methodology

Data collection and monitoring of the Abunzi were carried out in three successive phases in 13 districts of Rwanda: first, a baseline study was conducted (December 2009); secondly, the mediation committee hearings were monitored and “post-hearing” interviews held with the litigants (January 2010 – February 2011); finally, a follow-up baseline study was carried out (April/May 2011). In total, 510 litigants involved in disputes recently handled by a mediation

\textsuperscript{10} RCN Justice & Démocratie (2009).

\textsuperscript{11} RCN Justice & Démocratie, IDLO (2011). This report is the result of research undertaken in 2009-2010 in the districts of Rulindo and Gakenke (in the north of Rwanda), jointly funded by IDLO and the DGCD. RCN Justice & Démocratie organized round tables, workshops and training sessions, working with two target groups: first, representatives of the family councils (inama y'umuryango), councils of elders (inararibonye/inyangamugayo), village committees (komite z'imidugudu) and the National Council of Women, and secondly, mediators (Abunzi) and cell executive secretaries.
committee were interviewed individually by means of semi-structured questionnaires\(^\text{12}\), as were around 720 Rwandan citizens divided into focus groups. In each of the monitoring locations, RCN Justice & Démocratie organized two focus groups, one with ten men and the other with ten women. The groups included people who had submitted a dispute to the *Abunzi* and others who had never had any dealings with the mediation committees, the aim being to gather input from the population as a whole\(^\text{13}\). In addition to this, 151 mediation hearings were monitored, as were around twenty field visits made by the mediators to understand the subject of a dispute. A number of decisions or verdicts enforced by non-professional bailiffs were also scrutinized (see Map 1 and Appendix 1 for details of the geographical distribution of the studies).

\(^{12}\) 289 litigants were interviewed during the baseline study in December 2009 (hereafter: baseline study); 105 at the close of mediation hearings observed from January 2010 to June 2010 (hereafter: phase 1 interviews); 27 at the close of mediation hearings observed from July 2010 to March 2011 (hereafter: phase 2 interviews); and 89 during the follow-up baseline study carried out in April and May 2011 (hereafter: follow-up baseline study). A total of 510 litigants were interviewed.

\(^{13}\) The aim of the focus groups was to bring together, in each group of men or women, litigants who had submitted one or more cases to the mediators, on the one hand, and citizens who had never had any personal dealings with the *Abunzi*, on the other. The latter could share “outside” observations of proceedings from the viewpoint of the population at large. The focus groups were part of the baseline study (total of 60 groups, 30 groups of men and 30 groups of women) (hereafter: baseline study focus group) and of the follow-up baseline study (total of 20 groups: 10 of men and 10 of women) (hereafter: follow-up baseline study focus group).
For a significant proportion of the interviews and monitoring of committee hearings conducted between late 2009 and mid-2010, RCN Justice & Démocratie benefited from the invaluable cooperation of Rwandan partner organization, Haguruka\(^4\). In May 2011, RCN Justice & Démocratie collected a first set of data from three different districts that indicated the current stages in the dispute settlement process, from cell mediation committee to Primary Court. Lastly, work began on drawing up profiles of 1271 mediators from 393

\(^4\) Haguruka collected data in the districts of Gisagara, Huye, Rusizi, Kayonza, Musanze and Kamonyi.
Abunzi committees (four of them at sector level) spread over the 86 sectors of 15 districts. The objective was to build up a sociological profile of the men and women in whose hands lie much of the chances of reconciliation for members of a community.

This data gathering and ongoing analysis enabled RCN Justice & Démocratie to play an advocacy role with the Rwandan Ministry of Justice from 2009. The present study, based on both qualitative and quantitative processing of the data collected, aims to provide a full and detailed description and analysis of the functioning of the mediation committees as well as offering an insight into how they are currently perceived by the population as a whole.

It is important to note that the results published here are not intended to assess the impact of RCN Justice & Démocratie's field initiatives with the Abunzi, the training conducted being limited and highly targeted. RCN's goal is both more modest and more fundamental: to offer an insight into the realities on the ground, as experienced by both mediators and litigants, and to detail the strengths and limitations of the mediators and the challenges they face in the course of their mediation work. The research was always conducted with the aim of serving a useful purpose. RCN Justice & Démocratie set three main objectives for this study:

15 Bugesera, Rwamagana, Gatsibo, Kayonza, Kirehe, Rulindo, Gakenke, Kamonyi, Nyamagabe, Muhanga, Ruhango, Rusizi, Rutsiro, Gasabo and Rubavu.

16 See Box 2, p.19

17 At the time of amending the Law on the functioning of mediation committees in 2010, the Ministry of Justice drew on a number of suggestions and recommendations made or compiled by RCN Justice & Démocratie following field studies (see below) and during discussion workshops with community justice stakeholders. For example, RCN Justice & Démocratie had documented the negative impact that the presence of cell executive secretaries (local authority) acting as mediation committee secretaries could have on the credibility of decisions delivered by the Abunzi, and had consequently called for a change in the executive secretaries' remit.
Functioning of the mediation committees

Improve the relevance of training provision for mediators;

Create a sound database to evaluate needs and support constructive advocacy with the Rwandan Ministry of Justice and other partners with a view to reform;

Enable the Rwandan government and partners to assess progress made in public perceptions of the accessibility and effectiveness of the services provided by the Abunzi.

Monitoring of the Abunzi: preparation of the questionnaire

It should be noted that the Law governing the mediation committees (2010) was amended between our baseline study (December 2009) and follow-up baseline study (April/May 2011), leading to several important changes in the functioning of the Abunzi committees. When the new law came into force, elections were being held for cell mediation committees (July 2010), which led to the arrival of many new mediators. Following the setting up of sector mediation committees, a number of cell mediators regarded as “competent” and trustworthy joined these new bodies, leaving a relative vacuum at the cell level in terms of experienced mediators who were trusted by litigants. Finally, under the new law, cell executive secretaries were no longer (for several good reasons) secretaries of mediation committee “panels”\(^{18}\), thus taking away an essential resource person who could read and write official documents (summonses, statements, etc.) During the second semester of 2010, however, all the country's newly elected mediators received one or two days' training from the Ministry of Justice, and

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\(^{18}\) The mediation committee “panel” consists of three Abunzi chosen by the disputing parties to deal with their case; each mediation committee can therefore have several panel combinations for the various cases heard (see Section 1.2). Until the new Law on mediation committees entered into force in 2010, the cell executive secretaries automatically joined the three Abunzi selected; they were responsible for taking notes and writing up the minutes at close of hearing.
all the stakeholders (including mediators, cell and sector executive secretaries and judges) we met in 2011 were of the opinion that the general standard of the *Abunzi* had greatly improved in recent months.

At the same time, the population has gained a better idea of what to expect from a mediation hearing; in the villages, people's experiences of the local authorities (elders, *umudugudu*), *Abunzi* and – on occasion – Primary Courts are compared, contrasted, approved or criticized in terms of the “community justice” (or “human justice”\(^\text{19}\)), guaranteed rights, etc. each of the bodies does or does not offer.

From the perspective of a gradual shift in practices and perceptions, the dual time frame – baseline study/follow-up baseline study – enabled initial comparisons to be made after an interval of 18 months. Between the two baseline studies, observational studies continued through monitoring of hearings by RCN Justice & Démocratie and its partner organization Haguruka\(^\text{20}\). The approach

\[\text{19} \quad \text{When set up in 1994, shortly after the genocide of the Tutsis in Rwanda, RCN Justice & Démocratie developed the concept of “human justice” to guide its work, both in Belgium and in a number of developing countries. This concept embodies the notion of justice that inspires confidence (match between the law and social practices), is carried out within a reasonable time frame and space (length of proceedings, length of sentence, enforcement deadlines, accessibility) and enhances the human dimension: “Law and justice help build the lives of people and societies; help build not only their humanity but Humanity as a whole. By protecting, distinguishing, organizing, prohibiting and punishing, they ascribe rights and obligations to all human beings, who go on to create their own ways of resolving conflicts and build their future.” (Extract from the RCN Justice & Démocratie charter: http://www.rcn-ong.be). The building of “human justice” is all the more important in Rwanda, where the population still lives in a post-conflict context.}\]

\[\text{20} \quad \text{Hearings were monitored and litigants interviewed at the close of proceedings in two phases: from January 2010 to June 2010 (hereafter: phase 1 monitoring): 109 hearings/105 interviews, and from July 2010 to March 2011 (hereafter: phase 2 monitoring): 42 hearings/27 interviews. The two phases correspond to the periods before and after amendment of the Law on mediation committees. Some questions were added to the phase 2 questionnaire in relation to phase 1}\]
adopted remained the same: the governing principle of questionnaires and observation sheets, following the logical sequence of the *Abunzi* hearings:

**Chapter 1: Context of the mediation hearing:** summoning of parties, selection of the *Abunzi* members who will serve as the panel, explanation of rules and obligations, etc.

**Chapter 2: Quality of the *Abunzi*'s performance:** proper conduct of investigations, fair hearing of the parties, witnesses and audience authorized to speak, etc.

**Chapter 3: Effectiveness of *Abunzi* mediation:** mediation achieved or decision delivered, lasting resolution of disputes, comparison of the effectiveness of the *Abunzi*, Primary Courts and local authorities in settling conflicts.

**Chapter 4: Closing of the hearing:** rationale for the decision delivered, transparency of procedures, recording and communication of the minutes, filing of appeals, time frame for dispute settlement.

This report maintains the same four-part structure for presentation and discussion of the results. These have been meticulously analysed, using a multifactor approach that takes account of each party's sex, social status, “legal” position as litigant (plaintiff or defendant) and frame of mind at the outcome of the mediation hearing (“mediated”, “winning” or “losing” party). At the end of the report, both general and specific recommendations are made for the benefit of the various stakeholders involved in the functioning of the *Abunzi*.

The data collected during the monitoring of the mediation committees were enhanced and aggregated with other sources of information consulted during the research phase (previous studies by RCN Justice & Démocratie, consultation of registers, personal

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(the same applies to the 2011 follow-up baseline study questionnaires compared with the 2009 baseline study).
interviews with mediators and judges). The large amount of data collected and its cross-referencing should partly compensate for any errors that may have been made during the transcription, inputting or interpretation of the responses obtained in the course of this long research process. Mention should however be made of the difficulties encountered by RCN Justice & Démocratie and Haguruka teams in monitoring the Abunzi hearings. The sessions were sometimes cancelled or postponed at the last minute for a number of valid reasons (absence of litigants or witnesses, need for supplementary evidence), which could prolong cases for several weeks. For this reason, detailed assessment of dispute settlement over the long term was rarely possible, particularly when it came to monitoring enforcement of the mediators' decision. In addition to this, the variable and often erratic management of mediation committee registers did little to make the researchers' task easier, although executive secretaries' and mediators' practices continue to improve.
CHAPTER 1

CONTEXT OF THE MEDIATION HEARINGS

RCN Justice & Démocratie's first aim was to determine the extent to which the procedures laid down by the Law\textsuperscript{21} on mediation committees and other regulations published to date were respected before, during and after the mediation hearings. A number of points of procedure, which are important in establishing the context in which the mediation hearings operate, are analysed here. The following chapters deal with matters related to the quality of the \textit{Abunzi}'s performance during the hearings and to the options chosen for settling disputes.

\textsuperscript{21} The latest Mediation Committee Internal Rules and Regulations date from May 2011 (Ministerial Order No. 82/08.11 of 02/05/2011). These were preceded by the Internal Rules and Regulations of the Mediation Committee established by Ministerial Order No. 122 of 18/10/2004. A booklet, \textit{Inyigisho zigenewe ABUNZI} (“Lessons for mediators”), was also distributed by the Rwandan Ministry of Justice from June 2010.
1.1. Speed of processing dispute resolution cases

The mediation committee Law stipulates that “Mediators shall settle the litigation within one month as of the day the litigation is registered on the Cause List of the Mediation Committee”\textsuperscript{22}. The speed with which the Abunzi are expected to react to the cases brought by litigants is fundamental in ensuring the proper functioning of community justice mechanisms. According to the law\textsuperscript{23}, litigants must submit their case for registration by the cell Executive Secretary (or by his/her substitute or the chairperson of the cell mediation committee), who then submits it to the mediation committee for summonses to be issued; on occasion, however, litigants turn up without notice on the day a hearing is being held. They submit their case, the Abunzi take note and undertake to issue the formal summonses for a subsequent hearing and to inform the cell Executive Secretary.

Alternatively, disputes are often settled on the spot without any formal proceedings being brought. In this case, we have “invisible mediation” that does not appear in any official register.

The study found that in 85%/92% of instances, a case hearing begins less than a month after it has been submitted\textsuperscript{24}. A very similar proportion of litigants (79%/84\%\textsuperscript{25}) interviewed in 2009 and 2011 considered the Abunzi to have dealt with their cases “quickly”. “The Abunzi are faster than judges”, commented one respondent. This type of comment is recurrent and key to appraisal of the Abunzi at the local level, as will be seen in Chapter 3. For the minority who criticize the slowness of procedures, delays are felt to result from the mediators' ill will or uncooperativeness. “They dragged their feet

\textsuperscript{22} Article 20, Organic Law N°. 02/2010/OL.
\textsuperscript{23} Articles 5 and 17, Ibid.
\textsuperscript{24} Phase 1 monitoring/Phase 2 monitoring.
\textsuperscript{25} Baseline study /follow-up baseline study.
Context of the mediation hearings

Until the evidence vanished”26. When considered separately, the comments of the women interviewed did not differ from the figures given above.

Box 1: A large majority of land disputes

Around 70% of the civil cases brought before the Primary Courts concern disputes over arable land.

This is mainly attributable to the scarcity of land in Rwanda, the country’s high population density (the highest in continental Africa), the prevalence of subsistence farming, and successive waves of exile and return.

Over two-thirds of the litigants interviewed in our study reported land disputes over demarcation of plots or inheritance disputes. The latter cases are particularly delicate as local communities and the mediators themselves are torn between the weight of tradition (customary law) and the enforcement of modern laws (the 1999 Inheritance Law; the 2005 Law determining the use and management of land in Rwanda). In 2010, the National Land Centre launched a campaign to map and register the land, with 9 million parcels expected to be registered by 2013.

The large number of non-legalized marriages and “questionable” heirs they produce further complicates the situation.

However, the small number of focus groups (5 out of 60) that had a negative opinion of the speed of procedures in 2009 were female27. It

26 Baseline study, Kayonza district. The respondent was plaintiff in a dispute over a field “illegally” used by a neighbour to graze cattle.

27 The gender bias of the criticism was not found in the 2011 focus groups. Seven (out of 20) groups, however, considered the Abunzi too slow in dealing with disputes. Several attributed the delays to the (sometimes repeated) absences of one of the parties. To understand the focus group results, it is important to note that the groups generally contained only a small number of citizens who had had personal dealings with the mediators in the past (2.66/10 on average for the 2009 groups, 2.95/10 in 2011).
should be noted that “rapid processing” of disputes does not necessarily mean that the cases submitted are settled in one or two weeks. Our observations revealed that many cases were spread out over several weeks, mainly because of the need to carry out field visits or the absence of (one of) the parties.

According to the monitoring conducted in early 2010, over a third of litigants (37%; 18%) had received their summons less than a week before the hearing. The first mediation hearing is sometimes held the same day as the complaint is registered. When the litigants are summoned too close to a hearing, the defendants may not appear in due time, resulting in a postponement of the case to the next hearing (theoretically, the following week). Plaintiffs, on the other hand, as the ones who submitted the case, are more likely to be expecting the summons. The summonses are usually sent to the litigants in writing the day their complaints are filed. Even when the summonses are issued a week beforehand, they may take several days to arrive at their destination after passing through several local level intermediaries (assuming they do not go astray along the way). In 2011, a clear majority of litigants (84%) claimed to have been summoned between two and seven days before the hearing, as

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28 Phase 1 monitoring (January 2010-June 2010)/Phase 2 monitoring (July 2010-March 2011).

29 As of 2009, RCN Justice & Démocratie has undertaken, in partnership with the Ministry of Justice and other partners, to develop and trial several standard “tools” useful for the mediators’ work, for example, standard forms for summonses, notifications, minutes and registers.

30 On rare occasions, cases are heard in the absence of one of the parties, either because the litigant did not receive the summons or, more probably, because the litigant wanted to boycott the mediation. Example: a father whose daughter had brought proceedings against him for refusing to pay her school fees (Rusizi district).

31 Follow-up baseline study.
specified in the mediation committees’ Internal Rules and Regulations.\textsuperscript{32}

This situation does not seem to be of particular concern to the parties involved: between 88% and 96% of respondents\textsuperscript{33} found the notice given to be adequate. On a practical level, litigants are not normally required to pay for the summons to be sent. The scenario is somewhat different, as we shall see, when the Abunzi have to carry out field visits or make the mediation hearing minutes available to the parties.

1.2. Opening of the mediation hearing

Before the beginning of the actual mediation hearing, the parties must select three mediators to constitute the panel that will deal with the case. However, the Abunzi do not always trouble to remind litigants of the options for selecting the three mediators that are clearly set out in the law, including the parties’ right to refuse an Umwunzi\textsuperscript{34} (singular of Abunzi) for various reasons\textsuperscript{35}.

\textsuperscript{32} Article 14, Ministerial Order N°. 82/08.11: “The summons must reach the addressee at least two (2) working days between the date of reception and appearance.”

\textsuperscript{33} Baseline study /follow-up baseline study.

\textsuperscript{34} Singular of Abunzi

\textsuperscript{35} Article 18 (extract), Organic Law N°. 02/2010/OL: “On the day of appearance referred to in Article 17 of this Organic Law, the parties shall agree on three (3) Mediators to whom they shall submit their case. Where parties fail to agree on Mediators, each party shall choose one Mediator, and the two so chosen Mediators shall choose the third one. Where parties agree on one Mediator, the latter shall choose the two (2) others from within the Mediation Committee to assist him/her. Parties shall not have the right to refuse a Mediator or Mediators chosen following this procedure.” In addition, Article 17 of the Internal Rules and Regulations specifies that “the most senior mediator selected shall chair the panel. In case of equality of seniority, the oldest of the three (3) mediators shall chair the panel.” (Article 17, Ministerial Order N°.82/08.11).
Functioning of the mediation committees

It may be asked whether the mediators themselves are aware of the range of options. The fact remains that 93% of the litigants interviewed in 2011 (87% in 2009)\textsuperscript{36} reported being able to choose at least one *Umwunzi*. 

\textsuperscript{36} Baseline study/ follow-up baseline study.
Research on the mediators' backgrounds, carried out after the June 2010 elections, showed that 97% were farmers, the remaining 3% having various occupations such as teacher, construction worker (mason, plumber, etc.), running a small business or minister.

Overall, 50.1% of the elected Abunzi had already held positions of responsibility in their communities in state local government bodies and agencies, from village to district level (as coordinators/members of village committees, cells or sectors, members of advisory bodies (Njyanama at the cell–sector–district level) and community development committees, police officers, soldiers, court judges, Gacaca judges, members of the National Council of Women or National Youth Council). For 28.2% of them, contact with the population came through community services (as health workers, members of peace, justice and reconciliation committees, preachers, catechists, presidents of Ubudehe committees or savings and credit groups (tontines), dressmakers, artisans, etc.).

As far as their educational level is concerned, 3.2% have no educational qualifications; 5.0% have completed the first cycle of primary education (years 1 – 3); 67.1% the second primary school cycle (years 4 – 8); 16.6% have followed post-primary education/the first cycle of secondary school; 7.5% the second cycle of secondary school, while 0.6% still attend University and/or have already completed their university studies.

The researchers reported numerous cases of procedural error after the choice of the three Abunzi: mediators splitting up into two groups during a session to deal with two cases simultaneously; the Umwunzi responsible for taking notes leaving the room for a time, missing part of the hearing and taking notes again on his/her return; the Abunzi
not selected for the panel pursuing investigations into the case under examination\textsuperscript{37}.

In three quarters of the cases analysed (74%), the litigants' selection included at least one female *Umwunzi*\textsuperscript{38}; the litigants considered it unusual for an *Abunzi* panel to consist only of men\textsuperscript{39} (see also Section 2.1 on the active participation of female *Abunzi*).

In some cases, it may be impossible to enforce the law stipulating that the secretary of the panel be “a literate person”\textsuperscript{40}. The Internal Rules and Regulations specify that the chairperson of the panel of mediators must formally open the mediation hearing and “briefly recall the duties of mediators” (with no further details). The handbook\textsuperscript{41} the Ministry of Justice has produced for the *Abunzi* provides additional explanation of the law and procedures to be observed during a mediation hearing. It specifies that \textbf{the mediators must explain the procedure} to be followed (for taking the floor, showing respect, etc.). Yet only three out of a hundred litigants interviewed at the close of mediation hearings\textsuperscript{42} spontaneously mentioned the *Abunzi* giving any such explanations. Monitoring of the hearings revealed that explanations were given in only 42% of cases in the first phase of the study but in 84% of cases during the

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\textsuperscript{37} Phase 2 monitoring (July 2010-March 2011): 97%

\textsuperscript{38} Phase 2 Monitoring. The percentage is very similar (78%) when the plaintiff is a woman. While in monitoring of the hearings the percentage rose to 95%, this figure does not reflect irregularities that may occur during proceedings.

\textsuperscript{39} Baseline study. In almost 300 interviews, only around ten incidences were reported.

\textsuperscript{40} Article 5, Organic Law N° 02/2010/OL.

\textsuperscript{41} This 44-page handbook was published by the Ministry of Justice in 2010. It contains explanations of the concepts of dispute and mediation as well as explanations of the content of the law and the legislation concerning the *Abunzi*. The handbook was given to all members of mediation committees during training organized for them by the Ministry of Justice following the last mediation committee elections in July 2010.

\textsuperscript{42} Phase 1 interviews.
second. As a rule, the mediators merely mention the rules and conduct to be observed without any reference to their own duties and role as “conciliators” in the proper sense of the word. However, 80% of the litigants interviewed in 2011 (74% in 2009) felt that the rules and procedures had been adequately explained to them\(^ {43}\).

1.3. Summary

The time frame within which cases are processed by the mediation committees was considered very satisfactory. More data would, however, be needed to determine the average length of the mediation process, from registration of the complaint to the final outcome, and to confirm whether the one-month deadline for a decision to be reached and respected, set out in the mediation committee Law, is respected. In around one-third of cases, the parties receive the summons less than a week before the hearing, increasing the risk of one of the parties being absent on that day. Despite this, the litigants are generally satisfied with the summons procedure, the papers usually arriving during the week before the hearing. In the vast majority of cases, each litigant has the freedom to choose at least one of the Abunzi on the panel (the two selected then choose the third); the panel usually includes at least one woman. The content of the explanations provided at the opening of the hearing varies considerably from one hearing to another. Our monitoring suggests that, over time, the Abunzi have understood the importance of reminding parties of the rules of the “game”; however, the main goal – that of mediation – appears to be all too rarely mentioned by the mediator panels.

\(^ {43}\) Baseline study/ follow-up baseline study.
CHAPTER 2
QUALITY OF THE MEDIATORS' PERFORMANCE

One of the main strengths of the Abunzi must be the ability – and the desire – to understand the origin, contributing factors and consequences of the disputes they handle so that they can help resolve them. In order to do so, they must ask enough of the right questions (information gathering). Their integrity and impartiality are also at stake. The mediators' attributes and attitudes determine their credibility, the light in which they are seen by the litigants, and also ultimately (the perception of) justice being done.

2.1. Information gathering

81%/88% of the litigants interviewed\textsuperscript{44} acknowledged the mediators' efforts to understand the dispute by asking the right questions, too

\textsuperscript{44} Baseline study/ follow-up baseline study.
Functioning of the mediation committees

many even on occasion. Monitoring of the hearings gave comparable results (77%/82%). One respondent mentioned the Abunzi's careful use of “question-answer” techniques to try to increase people's awareness: “If they don't understand, they ask for repetition so that the people involved can understand better, too”.

Feedback did not however suggest that good listening skills stimulate curiosity or motivation on the part of the Abunzi. Monitoring of the hearings revealed that an active part was played by several Abunzi in only just over half of the disputes (55%). In most cases, only the panel mediators became involved in the discussion; all too often, only one Umwunzi (usually the panel chairperson) conducted the proceedings. Fewer than one-fifth of respondents felt that the Abunzi asked insufficient or irrelevant questions. However, the researchers also mentioned several hearings in which the mediators' questions were biased in favour of a cause they had endorsed from the start.

The active role played by female Abunzi was highlighted by 87%/90% of the litigants interviewed; this enthusiasm was tempered somewhat by the monitoring findings, which showed active participation by female mediators in 67% of cases. According to the litigants, an average of three women are present during the hearings (which is still very much a minority of the 12 mediators); of the 82 respondents, only one stated that no female mediator had attended the hearing of his case. There was much praise for the

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45 One participant from a men's focus group commented that the Abunzi “ask so many questions that we end up going home with a headache”. Baseline study focus group, Rwamagana district.
46 Phase 1 monitoring /Phase 2 monitoring.
47 Baseline study, Gasabo district. Comment from a (female) livestock breeder.
48 Baseline study, follow-up baseline study.
49 Phase 1 monitoring.
50 The number of female mediators present at the hearings was reported as follows: three women (23 occurrences), one woman (17), four women (13), two women (12), five women (12), six women (2), seven women (1) and eight women (1) (follow-up baseline study).
female Abunzi (from both male and female interviewees): “we really admire them”; “they ask a lot of questions and are competent and capable”; or “the women don't say much but when they do, it's something important”; “if it weren't for them, the problems wouldn't be analysed so well”. A number of litigants referred to the hard time some of the female mediators were given. “They tell the truth but the men dominate”. Apart from acknowledging these positive features of female Abunzi, the respondents did not report any differences in basic approach between the male and female Abunzi; a few men mentioned only that the female mediators “are more likely to fight injustice”; “our female Abunzi are fair”. Interestingly, disputes where the plaintiff is a woman do not appear to mobilize female Abunzi particularly: in such cases, they participated actively in only 50% \(^{51}\) of the hearings we monitored (compared with the 67% reported above).

Field visits are mainly made by the Abunzi in land disputes, when parcels of land (for inheritance) are at issue. Of the hundred or so disputes analysed at the beginning of 2012, field visits were carried out in less than a quarter of cases (21%) \(^{52}\). However, with only a few exceptions, our observers concurred that such visits were not needed, either because the litigants' explanations coincided or because they managed to reach an agreement. The second phase of monitoring, along with accounts given by the litigants interviewed, do however highlight some mediator shortcomings: in around one-third of cases, field visits that appear to be necessary in order to understand the background to the dispute and its possible consequences are not made. Moreover, 30% of the litigants interviewed in 2009 reported that no field visit had been organized because the mediators requested money to do so or because the plots of land were too far away \(^{53}\). Some litigants who saw themselves

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\(^{51}\) Phase 1 monitoring.

\(^{52}\) Ibid.

\(^{53}\) Baseline study.
as the “losing” party at the close of a mediation hearing claimed they had requested a field visit to no avail: “I wanted a field visit but they didn't do it”, said a mason who had lost his land claim case\textsuperscript{54}.

There was agreement that field visits are carried out when a case seems highly complicated or receives a lot of publicity. A surprisingly large number of mediators then take part in the visit and are surrounded, on arrival, by a wide range of informants (relatives, neighbours, witnesses)\textsuperscript{55}. It appears that, due to lack of time, the Abunzi usually try to gather as much information as possible at the local level (from village authorities, neighbours) to avoid having to make arduous field visits; the mediators are also in the habit of relying on the explanations and drawings made by the local authorities in the records provided by the parties during the procedure. When it comes to the place of the public during the Abunzi hearings, litigants and researchers share the same view (the sessions are, with very few exceptions, open to all). The Law gives the Abunzi the option of deciding whether a hearing will be held in public or in camera, the latter option being chosen to protect the parties' privacy or when the subject of the dispute is a sensitive one.

\textsuperscript{54} Ibid., Kayonza district.

\textsuperscript{55} Our observations of field visits (18) indicate that the average number of Abunzi taking part is 8.9 (out of 12 committee members); the three Abunzi from the panel selected to deal with the specific case are usually present (average of 2.7). In 16 cases, the field visits provided the opportunity to look for evidence and testimony to help understand the basis for the dispute; in two-thirds of cases, the Abunzi attempted to reconcile the two parties on the spot. After the field visit, the mediators normally invite the parties and their families to continue the discussion (or, where necessary, to come and learn what decision has been made) at the next weekly mediation session. By doing so, they avoid spending too much time \textit{in situ} and ensure that all the witnesses will be heard at the same time in neutral surroundings. In some very rare cases, field visits are organized before the first mediation hearing. On one occasion, we observed a defendant who was in great fear of the mediators arriving on her parcel of land, as she thought they had come to seize it … This last example, which is not an isolated one, highlights the need for the mediators to explain clearly to the parties the “how” and the “why” of their proceedings to ensure that conflicts are settled in as “reassuring” a way as possible (Field visit monitoring 2010-2011).
Quality of the mediators' performance

As a rule, comments made by the public are taken into consideration (in 74%/84%\(^{56}\) and 71%/76%\(^{57}\) of cases). The accounts given by the public are in fact sometimes favoured over those of the parties' witnesses. According to several litigants, the public contributes to establishing the truth and often plays a determining role. “The people give their opinion on what is happening”, said one man, accused of stealing a bicycle, who said he had avoided going to prison when the public opposed the decision “because they found it unfair”\(^{58}\). Members of the public can be highly useful and/or respected informants. “The Abunzi were getting away from the point, but they gradually understood what the conflict was about, thanks to the elders”\(^{59}\). Conversely, a quarter of the litigants interviewed in 2009 complained that the Abunzi sometimes decide to ignore the public or to pay them little heed: “They let people speak but don't give any weight to the information they provide”, said one widow, whose claim to inherit part of the land belonging to her grandparents had been unsuccessful\(^{60}\).

It should be noted here that the new Internal Rules and Regulations of the mediation committees, published in May 2011, formalize a procedure with regard to the public that does not appear to favour reconciliation of the two parties in a dispute. In paragraph 7 of Article 20, it is stated that “Any other person with information relating to the dispute under consideration and who has not been presented as a witness by the parties shall be required to inform the Chairperson of the Panel and also isolated” (paragraph 7)\(^{61}\), given that all witnesses are systematically kept in isolation before appearing.

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\(^{56}\) Baseline study /follow-up baseline study.

\(^{57}\) Phase 1 monitoring/Phase 2 monitoring.

\(^{58}\) Baseline study, Rwamagana district.

\(^{59}\) Phase 1 interviews, Rusizi district.

\(^{60}\) Baseline study, Rulindo district.

\(^{61}\) Article 20, paragraph 6, of Ministerial Order N° 82/08.11 : “Witnesses shall be isolated and ordered not meet each other until they are interrogated”. 
Isolating witnesses can be justified in the interests of establishing the truth by comparing their successive versions of events during a mediation hearing that is similar to a court hearing. However, separating all those who have information about a dispute seems difficult to achieve at the cell level, where the families are often closely interrelated. Moreover, is it not contrary to the spirit of community mediation to separate the relatives or friends of the litigants (not officially called as witnesses), thus preventing a range of stakeholders from taking part in collective discussion and helping to find a compromise? For local-level disputes, is it foolish to expect the expression and discussion of a wide range of opinions and testimony to offer a better chance of reaching a collective approximation of the truth than if a number of witnesses were heard one after the other?

At the end of their interviews with the researchers, the litigants were asked to give a score, ranging from one (mediocre) to five (excellent) to assess the quality of the Abunzi's work (technical) during a mediation hearing; the average rating was 3.47. The scores awarded by focus group participants were slightly higher, with an average of 3.99; citizens who had never submitted a case to the mediators were slightly more positive (4.12) than those who had already experienced a mediation procedure (3.87).

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62 Follow-up baseline study. NB: this question on the quality of the Abunzi's work did not feature in the 2009 questionnaire.

63 Focus group – follow-up baseline study. This positive assessment can, a priori, be attributed to the way in which Abunzi are selected at the local level by the community, which puts its trust in them and hopes that its demands will be taken into better account; this explains the feeling of frustration at having to make do with a consensus.
2.2. Attitude of the Abunzi to the litigants and their witnesses

Our observations showed remarkable impartiality on the part of the mediators to whom a case is submitted. This emerges clearly from our monitoring, during which in as many as 98%/97% of the cases observed, “the parties are given the same rights to explain the case”\(^6\). The litigants' perceptions (79%/85%) are equally positive\(^6\). The figure dropped slightly to 74% in 2009 (stabilizing at 85% in 2011) if the views of female litigants alone were taken into account. The most striking results came from widows, of whom only 57% (50% in 2011) felt they had the same right to speak as others\(^6\). Considered separately, even litigants who said they had “lost everything” or “obtained part of what I wanted” highlighted the mediators' positive attitude (67%); this did not prevent some litigants from making the basic point that having equal time to speak did not automatically mean all arguments being given equal importance: “They let you speak but after that they say whatever they want to”, said a “losing” farmer from the district of Rwamagana\(^6\).

The impartiality of the Abunzi was underlined by 73% of litigants interviewed at close of hearings\(^6\). Some stressed the positive, proactive role of the mediators: “They were respectful, and nobody was refused the chance to speak. They kept reminding us that we were brothers, that nothing should come between us”; “they really wanted to solve our problem”; “they behaved properly”; “I lost the case but they weren’t unfair to me. They gave me advice and redrew the borders [of the parcels of land] that had shifted.” In contrast, just

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\(^6\) Phase 1 monitoring/Phase 2 monitoring.
\(^6\) Baseline study / follow-up baseline study.
\(^6\) Interestingly, women who are single, separated or common law spouses did not report any discrimination against them.
\(^6\) Baseline study.
\(^6\) Phase 1 interviews.
under a quarter of the litigants interviewed overall felt that the disputing parties had not received equal treatment, with many reporting preferential treatment being given to wealthier litigants: “they didn’t give me the chance to explain because my dispute was with a rich man”; “we’re not equal when we appear before the Abunzi just as we’re not equal in society”\(^\text{69}\). Some respondents made a connection between the relevance/impartiality of the questioning and monopolization of the discussion by particular Abunzi during the mediation session. One man, who was aggrieved by the verdict against him, claimed: “There’s no freedom of expression in the mediation committee. Only the chairperson and the secretary have the right to speak. The chairperson asked me many questions in such a way that I couldn’t explain myself properly. The Abunzi didn’t let me bring witnesses, either.”\(^\text{70}\) The contribution made by the witnesses that the litigants submit and the **extent to which the witnesses are given a balanced hearing** was also studied as part of our research.

The findings for witnesses were similar to the figures given above for the public. Overall, 74%/84% of the litigants expressed satisfaction with the treatment given to witnesses (60%/65% of those who had lost their case); 68%/81% of female litigants (both plaintiffs and defendants) had a positive opinion of the mediators' attitude; it was once again widows who were the most critical, almost half (48%/42%) expressing frustration\(^\text{71}\). “If I were a man, they would have treated me differently. We widows have no say because we’re poor”, complained a woman from Rulindo district, who accused the Abunzi of not taking into account the testimony of her witness for the defence\(^\text{72}\).

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\(^\text{69}\) Baseline study, Kamonyi district (2).
\(^\text{70}\) Phase 1 interviews, Kayonza district.
\(^\text{71}\) Baseline study/ follow-up baseline study.
\(^\text{72}\) Phase 2 interviews.
Quality of the mediators' performance

Analysis of respondents' comments suggests that witness testimony suffers from non-observance of procedures or procedures that lack transparency. Several respondents noted that “all the witnesses were heard, but their testimony was not included in the minutes of the hearing”; others mentioned cases where one of the parties appeared without witnesses, not having been informed of his/her rights. The original summonses drawn up by the Ministry of Justice had no section for witnesses. After this omission came to light, RCN Justice & Démocratie, in agreement with the Ministry, added a section on witnesses in the summons forms used during training sessions. In the first phase of the mediation hearings monitoring, it was noted that when both parties had made sure to bring witnesses, they were fairly heard in 88% of cases. However, in 42% of the cases (72% in the second phase of monitoring), no witnesses appeared (or for only one party). In such cases, the mediators often decide to adjourn the hearing.\(^73\)

Systematic consideration of the information provided by outside sources (witnesses and the public) is one of the points on which the mediators are most poorly rated. Inconsistent hearing of witnesses is, according to several litigants, an example of the Abunzi's casual approach to cross-checking information, obtaining evidence and establishing the “truth” in order to determine which party should win and which is “at fault”. In this area, the courts are considered to be more reliable (we shall return to this point in Chapter 3). One farmer regretted that “the Abunzi sometimes fail to hear the witnesses”\(^74\); she had lost her case with the mediators before subsequently winning in court, after a witness statement had been taken into account. Others blamed the mediators' negligence on the fact that it was in their interests (or even an obligation?) to favour influential litigants.

\(^{73}\) To increase parties' awareness of the importance of submitting witnesses, RCN Justice & Démocratie has suggested adding a few words to the standard summons forms, inviting the parties to present one or two witnesses.

\(^{74}\) Baseline study, Huye district.
“My witnesses were rejected because I was in dispute with a rich man from Kigali”, explained a farmer who had wanted to protect sought-after land. While he had to give up the land temporarily, a Primary Court later overturned the ruling. “When you have money, it is only your witnesses that are asked to speak”, acknowledged a tradesman from the district of Kamonyi, who had won his land dispute case.

When asked about equal treatment of men and women, 94%/95% of the litigants (90%/92% of women) agreed with the premise that “the Abunzi treat the cases brought by women and by men in the same way”. In terms of “unequal treatment” observed, three men testified to women's cases being given priority owing to urgent family commitments. The monitoring findings showed a similar rate (96%) of equal treatment. Only three women's focus groups (out of a total of 39 groups) reported discrimination against women, but in each case only a small minority of participants (two, two and none out of a total of ten participants per group) had had any previous direct dealings with the Abunzi.

In 2009, over three-quarters of the litigants interviewed (76%) considered that, overall, the Abunzi show respect to the parties and to the public during mediation hearings. This figure rose in 2011 for the focus groups (85%/95%) and monitoring of hearings (92%/87%). One women's focus group described the constructive role played by the mediators in the following terms: “Even when the

75 Ibid., Kamonyi district.
76 Baseline study.
77 Baseline study / follow-up baseline study.
78 Phase 1 monitoring.
79 Baseline study focus group / follow-up baseline study focus group. Only one men's group (out of 40) reported discrimination against women.
80 Baseline study.
81 Baseline study focus group / follow-up baseline study focus group.
82 Phase 1 monitoring/Phase 2 monitoring.
Quality of the mediators' performance

parties are angry or mistrustful, the mediators explain matters to them; they try to placate them and, in that way, everyone finds their place, making it possible to mediate or reach a decision”\(^{83}\).

This positive feedback from the majority should not, however, obscure cases of negligence, insults, mockery, authoritarianism or bias denounced by numerous litigants: “the fact that they’re unpaid and tired because of the volume of work means they don’t always give the parties due consideration”; “they always take the side of the plaintiff - we defendants are ignored”; “if you appear before them a second time, the chairperson scolds you and says you’re always in conflict”; “the chairperson told me that if they wanted to, they could take back the land they’d helped me to get”. Discrimination against the most vulnerable litigants was mentioned several times: “the mediators aren’t interested in the poor”; “the poor have no value for them”. In 2009, around ten litigants (out of almost 300\(^{84}\)) claimed that women, too, suffered directly from lack of respect from the Abunzi (“they denigrate women”). The figures bear this out: 73% of women (62% of widows) described the mediators as being respectful compared with 81% of the men interviewed (2011 figures: 85% of women, 66% of widows\(^{85}\)). Of those who lost their case, 28%/29% complained about the Abunzi’s attitude (only slightly above the overall figure) compared with 17%/6% of those who won\(^{86}\). It should again be noted that in cases where a dispute was settled through mediation, 85%/91% of the litigants highlighted the respect shown by

\(^{83}\) Baseline study focus group, Rulindo district.

\(^{84}\) Baseline study.

\(^{85}\) Follow-up baseline study.

\(^{86}\) Baseline study, follow-up baseline study. In the focus group results, no significant difference was found between the perceptions of the women and the men interviewed.
the mediators; this percentage is significantly higher than the overall figures.\textsuperscript{87}

The disaggregated findings for women and widows given above go some way towards putting into perspective the highly positive perceptions of equal treatment of men and women previously mentioned. Two essential points should be taken into account to understand such a favourable impression. First, the litigants' perceptions (both women and men) are influenced by their internalization of the prevailing balance of power in rural Rwanda; perceptions of discrimination are thus a measure of individual expectations (more progressive or less so) in the face of tradition.

Similarly, the fact that a litigant reports an equally respectful attitude to both parties \textit{does not in itself mean} that the law has been fairly interpreted (especially as few Abunzi have a full understanding of the legislation – see Chapter 3).

Secondly, any interpretation of the monitoring statistics (equal treatment of men and women (96%); respect of the parties and the public (92%/87%)) should make allowance for the (positive) effect the presence of observers from outside the community is likely to have had on some aspects of the mediators' behaviour.

While the gender variable in cases heard by the Abunzi deserves to be studied in greater depth\textsuperscript{88}, the figures and comments given in this section suggest that another factor strongly influences the mediators: the litigants' \textbf{social status}. It was not possible to demonstrate a direct link between the types of response given and the socioeconomic status of the respondents. The vast majority of litigants who come into contact with the mediators identify themselves as “farmers”

\textsuperscript{87} Follow-up baseline study.
\textsuperscript{88} (Non-)recognition of the rights of women enshrined in current legislation is an issue that will be covered in Chapter 3.
Quality of the mediators' performance

(84% of our respondents\textsuperscript{89}), and our questionnaires did not include respondents' monthly incomes. However, several of the comments quoted above as well as the complaints reiterated by widows (as an often vulnerable category of the population\textsuperscript{90}) shed light on a balance of power between the two parties that is contingent on political and financial “prestige”. In-depth analysis, based on the overall research findings, of the disputes involving widows, in particular, reveals that they lost 59% of their cases. While even this figure should be viewed with caution, there being no reason to believe that these widows are necessarily in the right, it suggests that they do not benefit from any special sympathy. When widows lose their case, they often end up discouraged, with no assistance or support: “\textit{My evidence wasn't taken into account but I'm not going to appeal because I live a long way from the court. I'm a widow with no children and I wouldn't be able to go back and forth to Kinihira}.”\textsuperscript{91} During the 2011 follow-up baseline study, we interviewed around 100 litigants specifically about the treatment accorded to “vulnerable persons” (widows, orphans, people with disabilities). The relatively high score (81% of respondents had not observed any apparent discrimination) is likely to be due to various types of methodological bias\textsuperscript{92}.

\begin{flushright}
\textsuperscript{89} Baseline study / follow-up baseline study.
\textsuperscript{90} Their sex clearly contributes to widows' vulnerable position: it is the patriarchal cultural tradition in Rwanda that leaves widows so impoverished (more than their male “counterparts”) ...
\textsuperscript{91} Phase 1 interviews, Rulindo district.
\textsuperscript{92} First, the way the question was formulated – “Do the Abunzi take the interests of the most vulnerable groups into account?” – could have been confusing in terms of how each respondent defined the concept of “vulnerable groups”; the majority are likely to have associated the term more with people with disabilities than with citizens in a precarious socioeconomic situation (such as widows). Secondly, as already mentioned, respondents may feel uncomfortable criticizing attitudes that are vigorously combated by the authorities through repeated information campaigns: specifically, the exclusion of vulnerable people for whom numerous integration programmes and assistance are organized.
\end{flushright}
When it came to assessing (on a scale of one to five) the Abunzi’s integrity during a mediation hearing (level of trust placed in them), the average score given by respondents was 3.65\(^{93}\). The focus group responses were once again slightly higher (average score: 4.03), with the same noticeable difference between citizens who had no direct experience of mediators (4.16) and those who had already had dealings with them (3.91)\(^{94}\).

### 2.3. Summary

While the number and relevance of the questions mediators ask is generally appreciated, this is often due to only some of the mediators playing an active part in the proceedings. The competence and integrity of female Abunzi are recognized by litigants, although their approach to mediation appears little different from that of the male mediators. When it comes to field visits, the mediators provide a “minimum service”. As field visits require time and money, the Abunzi confine them to complicated cases, often involving land disputes; this is something litigants resent. Though often a determining factor in settling disputes, participation of the public is called upon in only three-quarters of hearings. The mediators were observed by our researchers to show remarkable impartiality when hearing the parties in dispute; nonetheless, the litigants, especially women and widows, were less convinced of their objectivity. The hearing of witnesses is not always sufficiently rigorous and/or taken into account by the mediators, and the witnesses brought by influential parties are given more opportunity to speak. All too often (in up to 72% of cases), the witnesses summoned do not appear and the hearings are adjourned. In the litigants’ view, there is near perfect equality of treatment given to men and women by the Abunzi (which does not mean that women’s rights are ensured in reality). It

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\(^{93}\) Follow-up baseline study.

\(^{94}\) Follow-up baseline study focus group.
is the most socioeconomically vulnerable litigants (widows, in particular) who appear to be discriminated against. The overall level of respect shown by mediators to the parties and public present was given a higher score in 2011 (85%) than in 2009 (76%). Despite this, many cases of negligence, mockery or insults were mentioned, the strongest criticisms unsurprisingly coming from widows and those who had lost their case.
CHAPTER 3

EFFECTIVENESS OF ABUNZI MEDIATION

At the end of Chapter 1, an explanation was given of the main task the mediation committee Law assigns to the Abunzi: “to seek first to conciliate the two parties. In case of non-conciliation, they take decision consciousness in all honesty and in accordance with the Laws and local customary practices provided it is not contrary to the written Law”\textsuperscript{95}.

As the last stage in conflict mediation (after the informal structures that exist at family and village level), the main aim of the cell and sector mediation committees is to help litigants reach an amicable agreement, thereby reducing the number of appeals the Primary Courts have to deal with. More fundamentally, an agreement actively drawn up by the two parties in a dispute stands a better long-term chance of having its conditions respected, thus paving the way for reconciliation that goes beyond the mediation of a particular case. Mediation should not designate winners or losers; its aim is to

\textsuperscript{95} Article 21, Organic Law N°. 02/2010/OL.
encourage the building of a shared vision for the future rather than a confrontational and moralizing focus on possible wrongs done in the past. In practice, however, a number of litigants set store by the establishment of one “truth” so as to be able to turn the page, favouring a decision delivered by the Abunzi or a verdict handed down by a court. This approach is understandable, and one favoured by mediators who fail to seek a compromise. All too often, though, the mediators are prematurely seen as “judges”.

The duality of the options and preferences (mediation versus decision) given below reflects litigants' responses to the question of whether mediators or Primary Court judges are better able to settle disputes.

3.1. Mediating rather than judging

Less than two-thirds of the litigants interviewed in 2009 and 2011 (62%/65%\(^{96}\)) and at the close of mediation hearings (55%/52%\(^{97}\)) stated that the Abunzi had attempted to mediate between the two parties during the settlement of a dispute. Monitoring of the hearings confirmed these findings: in only 56%/46%\(^{98}\) of the cases observed was there a real attempt at mediation. Given that the official purpose of the hearings, set out in the mediation committee Law, is to seek to conciliate the two parties, these figures are surprisingly low, particularly as “to seek to conciliate” does not mean “to conciliate”. Out of a total of 456 cases involving litigants interviewed between 2009 and 2011, only 67 (14%) resulted in actual mediation\(^{99}\). Monitoring of the hearings revealed 17 cases of mediation out of a total of 82 (20%). The general feeling among the

\(^{96}\) Baseline study/ follow-up baseline study.
\(^{97}\) Phase 1 interviews /Phase 2 interviews.
\(^{98}\) Phase 1 monitoring/Phase 2 monitoring.
\(^{99}\) Baseline study, follow-up baseline study; Phase 1 interviews/Phase 2 interviews.
Effectiveness of Abunzi mediation

local community is similar: for 79% of the focus group participants in May 2011, most disputes submitted to the Abunzi do not end in an amicable settlement. It should be noted that no significant change was observed during the two-year observation period covered by the present research despite turnover in the mediation committees and training being provided.\(^{100}\)

When the Abunzi do attempt to mediate, the litigants find their approach clear and well-founded: “before beginning, the Abunzi ask the parties if they wish for mediation; if the parties say yes, they help them”; “they mediate between the parties so that they can carry on living together without conflicts”. Some respondents saw a link between mediation and more lenient “punishment”: “they explain clearly that they are Abunzi, that you ask for forgiveness, get lighter punishment and share a beer”. However, the mediators very often face obstruction from one or both of the parties: “they tried to mediate but one of the parties refused”; “they did their utmost to bring him and his wife back together, but he refused because she'd left him 15 years before”; “Yes, the Abunzi tried to mediate between us, but I didn't want that because in one way or another the dispute would have gone on”.

It is not only a question of the parties obstructing the mediation process. The figures above show that in over a third (phase 1 monitoring) or half (phase 2 monitoring) of cases, the Abunzi themselves bear responsibility for mediation failing and thus for contravening the law with their approach: “the Abunzi didn't try to mediate: if they had heard all the witnesses and made a field visit, that would have helped”; “they behave like judges, they don't try to bring the parties together”; “they don't mediate between people, 

\(^{100}\) Joint figures, baseline study and phase 1 interviews: mediation attempted in 60% of cases, with a 12% success rate; joint figures, follow-up baseline study and phase 2 interviews: 61%, 23%. Phase 1 monitoring: 22% mediation success rate; phase 2 monitoring: 15%.
they punish them”; “they try to drive the parties apart rather than bringing them together”; “they listen to what we say and then they make a decision straight away”; “they didn’t try to mediate but sent them straight to court”. The Abunzi seldom seem to use the appropriate methodology for mediation; they lack knowledge, supervision and rigour. The “mediation” often consists merely of an order for the two parties to withdraw and find a compromise (that is, when they are not sent back to their families – which is where they generally started out – to make another attempt at finding common ground).

Other testimonies highlight the difficulties of mediation being attempted after a series of failures by other bodies: “When people come to the Abunzi, it’s because local authority mediation didn’t work. And so the Abunzi won’t succeed either”; “They didn't try to mediate. Mediation isn’t possible – the dispute goes back too far”. A number of conflict resolution theorists have demonstrated that successful mediation (or arbitration) depends on several specific space and time conditions being met. This insight is crucial in understanding the existence of so many mediation bodies and will be discussed later in the study (see Section 4.3 and Conclusion).

Several litigants pointed out that procedure were unclear when a mediation attempt failed. In most cases, the Abunzi “close” the dispute through some form of decision, but two respondents

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101 Several litigants reported the Abunzi using the term “decision” in the hearing minutes despite the parties having agreed on mediation; one focus group participant reported hearing the mediators ask the parties at the start of a hearing if they preferred the “mediation” or “decision” option.

102 “The Abunzi wanted the family to deal with the case, but I told them we had already tried that and it hadn’t worked!” Phase 1 interviews, Kamonyi district.

103 For the theoretical background, see ZARTMANN William (2007). The concept of the “ripeness” required of a conflict for the two parties to agree to mediation offers an insight into the calculations the two sides make (sometimes out of weariness) to assess their interests at each new stage of the mediation process as time passes.
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reported that, when mediation was impossible, “they direct [the parties] to the courts”. Two other respondents reported that the Abunzi “discuss common ground” or seek to reconcile the parties after the decision has been taken. The litigants seem aware of the outcome of a mediation or decision. They clearly understand that the two options are theoretically possible. But do they all realize that the mediation committee Law stipulates that mediation should always be sought first? (Section 3.2 deals with the litigants’ views of the various options and their sustainability over time).

Unlike disputes involving debts, where agreement can often be found, land dispute cases are more likely to be settled by a decision (some inheritance disputes can be settled through mediation). The following examples from the focus groups are revealing: “When there are disputes over land, there’s no mediation, except when it’s a question of dividing up the land between members of the same family. The Abunzi try to bring the parties together when there are conflicts between husband and wife.”\(^{104}\), “They try to reconcile the parties in cases involving debts, the shifting of boundary markers between fields, and theft of crops.”\(^{105}\) The statistics on land and/or inheritance disputes bear out these findings: according to the litigants concerned, mediation was attempted in only 58% of cases (with a successful outcome in only 11% of cases)\(^{106}\), and in 51% of cases (with an 8% success rate) in our monitoring data\(^{107}\). The percentage of cases of successful mediation is much lower than the

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\(^{104}\) Baseline study focus group, Gasabo district.

\(^{105}\) Follow-up baseline study focus group, Rulindo district. The focus groups estimated that the Abunzi attempt mediation in 73%/90% of cases (in 2009 and 2011 respectively).

\(^{106}\) Baseline study, follow-up baseline study.

\(^{107}\) Phase 1 monitoring/Phase 2 monitoring.
figures given above; here again, an analysis of changes in the results between 2009 and 2011 shows a mixed picture\textsuperscript{108}.

Phase 2 monitoring shows that mediation was possible in two-thirds of cases after witnesses were heard. This finding argues for witness testimony to be taken into account and for witness participation at the compromise-seeking stage to be encouraged. In some circumstances, litigants expressed a strong desire for the “truth” to be established. This is a legitimate claim insofar as justice is often dependent on an interpretation of the past that clearly sets out the errors committed by one (or both) of the parties. As the Abunzi’s mandate is to seek a means of mediating, mediation is all the more likely to be achieved if it draws on a proven record of events, better substantiated by tangible evidence, sources of information and a range of testimony. And if the mediation should fail, the decision delivered by the Abunzi will be all the better founded.

\textit{The Abunzi and the situation of women}

The figures for disputes involving women (as plaintiffs or defendants) do not differ significantly from the averages indicated above, suggesting no gender-related difference in the Abunzi’s approach\textsuperscript{109}. Nonetheless, closer examination of the circumstances of disputes involving women – for example, it emerges clearly that in matters of inheritance, customary law still prevails over “modern” law – reveals that the mediation option is more likely to ensure that women’s cases are heard and taken into consideration by the mediators.

The mediation process involves dialogue based not only on the “rules” prescribed by law (or custom) but also on the status of the

\textsuperscript{108} Baseline study figures: mediation attempted in 57% of cases, 8% success rate; follow-up baseline study figures: 61%, 20%. Phase 1 monitoring: mediation attempted in 55% of cases, 11% success rate; phase 2 monitoring: 40%, 0%.

\textsuperscript{109} Baseline study: 61%. Phase 1 monitoring: 66% (plaintiff is a woman) and 63% (defendant is a woman).
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parties to the dispute, their problems, difficulties and background. It is vital that the community as a whole (starting with close relatives) be present alongside the parties. The public, as witness or participant, can offer support to a woman on her own when an amicable agreement is being negotiated. Our observations show that Abunzi mediation proceedings may even be more advantageous for certain categories of women than the “egalitarian” modern laws of the formal justice system; for instance, in the case of unmarried women for whom the law makes no provision.

3.2. Litigants' viewpoint

One quarter of the litigants interviewed during our 2011 follow-up baseline study, for which the procedure piloted by the Abunzi was completed, reported successful mediation. For 65% of them, the outcome of the procedure established a lasting solution to their dispute. “we are back on good terms”; “we are going to live together peacefully again”; “After mediation, there will be no more suspicions. We will share everything”; “it will help us to solve other family problems”, etc. The remaining third of litigants expected the opposing party to appeal against the terms of the agreement, or stated that after the mediation they had lost (almost) everything.

Compared with the 65% mentioned above, only 41% of litigants whose cases resulted in the mediators delivering a decision felt that it would put an end to the dispute. For the “losing” side, the percentage of optimists unsurprisingly dropped to 14% (62% for the “winners”). The possibility of lodging an appeal was often raised.

110 Follow-up baseline study.
111 To understand this specific case, we can imagine situations where one of the parties initially agrees to give up their claim in order to reach a mediated solution only to change their mind and go back on their word. In some cases, the Abunzi impose mediation when the parties are not willing.
112 Follow-up baseline study.
“We’re on worse terms than before”, said one farmer, whose brother had brought proceedings against him for selling a family house without consulting him. According to the defendant, the Abunzi had made no effort to mediate, adding that he would have “preferred a land sharing option to losing everything”\(^{113}\). Of the litigants interviewed between July 2010 and March 2011, 81% considered their dispute to be unresolved; in the vast majority of cases, the mediators had had to deliver a decision\(^ {114}\). “Cases resolved through mediation do not come up again; but when a decision is handed down, one of the parties is usually dissatisfied and lodges an appeal”, observed one focus group participant from Musanze district\(^ {115}\). Another pointed out that some disputes are trickier than others to settle: “It’s hard to find a lasting solution to land disputes.”\(^ {116}\)

When asked whether they regretted the fact that mediation had failed, 76% stated that mediation would have been preferable\(^ {117}\). The reasons given for this were quite rational: “it would have been a sign of good relations and trust between the parties”; “I would have preferred our family to be reunited”; “mediation doesn’t cost anything, but appealing against a decision is expensive”. Even among respondents who had won their case with the Abunzi, 69% expressed a preference for mediation. “It isn’t good to be on bad terms with one’s sister,” said one elderly woman who had won an inheritance dispute but expected her sister, on the “losing” side, to lodge an appeal\(^ {118}\). In contrast, one-quarter of the litigants (24%) expressed satisfaction that a decision had been handed down, explaining that no other solution would have been possible: “a decision had to be

\(^{113}\) Ibid, Huye district.
\(^{114}\) Phase 2 interviews.
\(^{115}\) Follow-up baseline study focus group.
\(^{116}\) Ibid., Kayonza district.
\(^{117}\) Follow-up baseline study.
\(^{118}\) Ibid., Rwamagana district.
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made because we didn't get on”; “the dispute went back a long way”119.

All the focus groups interviewed in 2011 (20 out of 20) unanimously favoured mediation as the best way of settling disputes. The main arguments put forward were as follows: “mediation puts an end to suspicions and quarrels”; “decisions are time-consuming and expensive, and the parties stay on bad terms”; “when mediation is possible, everyone is happy”120. With one exception, the focus groups agreed that the Abunzi “contribute to strengthening the feeling of social cohesion and reconciliation within communities”. Such a conviction is encouraging in the post-conflict context of Rwanda today, even as some research indicates a high level of mistrust still prevalent among many Rwandans121, which would logically lead many to prefer decisions over attempts at mediation by the Abunzi.

To put the strong enthusiasm expressed for mediation into context, two factors should be mentioned that have a bearing on the collective imagination in Rwanda today. First, mediation has always been the preferred means of settling disputes in Rwanda, creating a cultural heritage with which a majority of citizens in rural areas identify. Secondly, the Rwandan authorities' official policy on the

119 Follow-up baseline study.
120 Follow-up baseline study focus group.
121 See IRDP & InterPeace (2010). This study reveals that 47% of the population consider the quality of relations between Rwandans to be only “average” or “poor”. Of the respondents who described relations as being “poor”, 97% attributed this to “the difficulty of genocide survivors living alongside the perpetrators of the crimes”. While over two-thirds (69%) of the Rwandans interviewed stated that the relations between Hutu and Tutsis were “good” or “very good”, 53% of Rwandans consider the issue of ethnicity to be an everyday problem. The mistrust that exists between members of different ethnic groups was cited as the main reason for animosity between Hutu and Tutsi by one-third of the respondents who declared relations to be unsatisfactory. It should be noted that the question of ethnicity is closely linked to land tenure; a majority of disputes concern parcels of land and can often be traced back to the waves of exile, return from exile and internal migration that have marked the country's violent history since 1959.
absolute need for “unity and reconciliation” is likely to influence how litigants feel they should respond when questioned about the relevance of the Abunzi's mediation role.

3.3. Mediators versus judges and local authorities

The litigants were asked to indicate – and justify – their preference between the practices of, on the one hand, mediation committees and Primary Courts and, on the other hand, mediation committees and local authorities (cell executive secretaries) in terms of the ability of these bodies to “settle disputes”. The findings show that a majority of litigants have greater confidence in the courts than in the Abunzi when it comes to obtaining justice; the mediators are, however, greatly preferred to the local authorities.

In 2009, 72% of the litigants who expressed an opinion held the functioning of the courts in higher esteem than the mediation committees\(^{122}\). Unsurprisingly, this figure increased to 80% for litigants who declared they had lost all or part of their claims after a decision by the Abunzi. For those who “won” their case, the figure remained high, at 65%. In 2011, a slight improvement was noted in the results in favour of cell-level Abunzi: although 58% of those interviewed still preferred higher-level bodies over the cell mediators, the figure was 14% less than in 2009\(^{123}\). Might it be that the improved results for the cell Abunzi reflect the appreciation expressed by a number of litigants for the capacity building undertaken with these mediators?

\(^{122}\) Baseline study.

\(^{123}\) Follow-up baseline study. Of the “losing” parties, 69% preferred the sector mediation committees and Primary Courts compared with 47% of those who “won”. In the formulation of the question in the follow-up baseline study, the Primary Courts were grouped with the sector mediation committees.
In all cases, the reasons for preferring the Primary Courts (and sector mediation committees) indicate “quality” criteria for the Abunzi to meet. The main argument put forward in favour of the judges is their professionalism and mastery of procedures, laws and investigation techniques, which are believed to make their verdicts more reliable (a view expressed in various ways by 70 respondents in total). Some typical comments illustrate this viewpoint: “Court judges do what they learned during their studies whereas the Abunzi proceed by trial and error”; “The courts refer to the law – the Abunzi don’t”; “The courts try to find more evidence”. Our monitoring of the hearings confirmed that, while the situation is gradually improving, the mediators' unfamiliarity with the law means that they rarely make reference to legislation to support their reasoning.\(^{124}\)

This situation obviously causes problems when it comes to enforcing “modern” laws on land tenure and on “matrimonial regimes, liberalities and successions”, which are intended to supplement customary law. In fact, customary law remains predominant in the mediators' practices. Very recent testimony has revealed that when it comes to successions, in particular, women remain highly discriminated against in comparison with men\(^{125}\). Some “victims” of

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\(^{124}\) According to our observations, reference was made to the law in only 6% to 29% of cases (Phase 2 monitoring/Phase 1 monitoring). The Abunzi appear to refer to general principles rather than specific legislation. Litigants reported reference to the law being made in 56%/59% of cases (Baseline study/follow-up baseline study). In reality, however, even when mediators do make the attempt, few litigants are able to assess the relevance of the legislation mentioned. They are, however, well aware that mediators do not feel comfortable with the law: “I see they have books but they don’t know anything”; “they don’t know the law but they make out they do know it a bit” (Baseline study).

\(^{125}\) As part of the “Women’s Access to Land” project, launched in October 2010 and funded by UN Women-Fund for Gender Equality, “training the trainers” sessions were run by RCN Justice & Démocratie. Of the 31 paralegals and community stakeholders invited to share their experiences, only one mentioned witnessing a woman obtaining title to an umunani (share of land granted to children by their parents while still alive). It is interesting to note that, according to the provisions of the 1999 Law on successions, female descendants enjoy equal rights to the
decisions felt to be unfair have no hesitation in making this known: “The mediators took away rights that are mine by law. I wasn’t informed of the sale of the field even though it had been registered in the names of both my husband and myself and we were married under the community property regime”, explained one resident of Kirehe district\textsuperscript{126}.

In 2009, litigants' views of property or succession disputes handled by the Abunzi were revealing: 82% (10 points higher than the overall figure given above) expressed a preference for court practices over those of the mediators. Two years later, however, the situation had changed: only 51% of the same category of litigants preferred the sector mediation committees and courts. Many litigants feel that cell mediators are incompetent, and only the courts know the law, often overturning Abunzi decisions. This view is still heard today: “Sometimes we lose at the Abunzi level, but the decision changes when we go to court”; “When you don't agree with the decision handed down, you get justice from the courts”; “He was able to express his disagreement with the decision made. He went to court and he won”, etc. The “corrective” function attributed to the Primary Courts and to the sector mediation committees set up in June 2010\textsuperscript{127} undermines litigants' confidence in the cell-level Abunzi.

land to be shared on the death of their parents; on the other hand, in the case of umunani, the Law specifies only that girls should not be discriminated against when land is given by the parents. It is easy for the lawyers of male clients being sued by their frustrated sisters to argue that when a girl receives a sufficiently large piece of land following her marriage, it is normal for her to receive a smaller umunani than her brother(s). The day-to-day discrimination observed in practice is all the more problematic for women who are socioeconomically vulnerable; the 1994 genocide radically transformed Rwandan society by making many of them (widows or women “abandoned” by their husbands) responsible for their households. See also: UWINEZA Peace, PEARSON Elizabeth (2009).

\textsuperscript{126} Phase 2 interviews. In statistical terms, however, the preferences expressed by women litigants are not significantly different from those of the respondents as a whole: 75%/50% (Baseline study / follow-up baseline study).

\textsuperscript{127} Organic Law N°. 02/2010/OL.
The argument in favour of the Primary Courts has to do with the greater impartiality of the regular justice system: “the fact that the Abunzi know the parties can influence their decision”; “there is greater transparency in the courts”; “the sector Abunzi are fairer than the cell mediators”. Some respondents saw the judges' professionalism as a protection against the petty corruption that, in their view, plagues the mediators: “She won in court after losing at the mediation committee because she didn’t give them the Rwf 5000 they asked for”. Four other respondents stressed the fact that the courts analyse the cases submitted to them “in greater depth than the Abunzi”. Also worth mentioning is one respondent's comment that in court “witnesses take the oath before testifying and are properly listened to”. This remark takes us back to the previously raised issue of some mediators not taking witnesses sufficiently into account.

A minority of litigants, on the other hand, prefer the decisions delivered by the mediators for two main reasons: the Abunzi's accurate local knowledge of the points of contention (22 respondents) and the speed with which they handle cases (12 respondents). First of all, the mediators' local knowledge is valued not only as an aid to understanding disputes (“unlike the courts, the Abunzi have a lot of information about the case”; “they know what happened”; “the Abunzi know the community and its problems better than the courts”) but also as a means of making justice accessible to a wider public (“the courts are far away, and people don't have enough time to do their work once their case goes to court”). Several respondents mentioned the fact that, unlike the Abunzi, judges hardly ever make field visits. Secondly, many appreciate the speed with which parties can have a dispute settled in a case handled by the Abunzi. As previously mentioned, our monitoring revealed that between 85% and 92% of cases are heard less than a month after being registered. Even if the hearing lasts several weeks, the parties are sure to see their case move forward every week; they can also
easily attend the mediation sessions, which are held near the cell office.

It is important to note that, in the two baseline studies, over a third of the litigants interviewed preferred not to compare mediators and judges as they felt they did not have enough information or experience with the Primary Courts. On the other hand, a number of other respondents with no real experience of the courts are likely to have rated the Primary Courts more highly than the mediation committees, basing their judgment on an idealized picture of – or admiration for – “literate” and “expert” judges. Six respondents in 2009 and ten in 2011 assigned the mediators and the courts equal value or a complementary function (“they're all important at their different levels”; “The Abunzi are just as important. If they weren't there, the courts would be overloaded”). Finally, many of the litigants who indicated a preference for the court judges also expressed their commitment to the Abunzi philosophy: “we prefer them but they don't know the laws”; “the courts respect the laws, but the Abunzi have a lot of feeling”; “if the Abunzi were able to apply the laws, they would be the best at settling disputes”; “the courts are more effective than the committees except where mediation is concerned”. Litigants who had undergone successful mediation tended to be more favourable to the Abunzi (50%/60%128).

Litigants' perceptions and preferences

A comparison between the mediation committees and local authorities (at village and cell level) revealed a clear preference for the former. In contrast to the Abunzi/judges comparison, nearly all respondents expressed an opinion, having been required to refer their case to the umudugudu (village committee) or cell executive secretary before submitting it to the Abunzi. The litigants were

128 Baseline study /Follow-up baseline study.
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therefore speaking from experience. Between 66% and 75%\(^{129}\) stated that they preferred the methods and procedures used by the mediation committees. Surprisingly, the reasons put forward for favouring the Abunzi philosophy and approach over the local authorities are very similar to those given in preference for the courts over the Abunzi.

The mediators' expertise and technical skills ("they examine cases in depth"; "they analyse the evidence properly"; "unlike the local authorities, the Abunzi ask for witnesses") were put in first place (56 respondents) to explain why the Abunzi “are able to settle problems that are difficult for the local authorities to deal with”. For one farmer from Gasabo district who was reconciled with his “opponent”, “the local authorities don't understand, for example, how someone's estate should be divided up”\(^{130}\). The collective nature of the Abunzi hearings ("several of them work together") was also contrasted with situations where an executive secretary might have to deal with the parties alone: the fact that the mediators work as a group is likely to lead to better solutions as well as limiting the risk of bias, of which the local authorities are often accused (46 respondents): “The local authorities are afraid of dealing with problems involving their friends whereas the Abunzi are neutral.” (Conversely, eight respondents considered the Abunzi to be biased).

For the respondents who favoured the approach of the mediation committees, the Abunzi use more elaborate investigation methods and questioning techniques. However, several of those who were “disappointed” criticized the mediators” lack of awareness of the local context (16 respondents) ("at the local authority level, the

\(^{129}\) Ibid. Around sixty respondents (out of 378) did not express a preference, considering that the two levels of mediation gave similar results, or (less frequently) that the mediation committees and local authorities were complementary.

\(^{130}\) Baseline study.
community is involved and you get justice’; “you need to start at the bottom up to settle a dispute”; “they accepted the figure given for the value of the land without making a field visit”. On the other hand, there was praise for the mediators' powers of persuasion (17 respondents): “the Abunzi are capable of mediating between the parties and putting an end to their disputes”; “the local authorities don't mediate, they punish”; “The local authorities are better informed about disputes than the mediators but the mediators are less afraid of making decisions. The local authorities are afraid of dealing with certain cases”.

Focus group participants saw the local authorities as “often corrupt” and reluctant to act as “they don't want to make enemies within the community”. The fact that the mediation committees are institutionalized by law also commanded litigants' respect: “The mediators know they are taking decisions that will have to be enforced. The local authorities' decisions are disregarded”; “the Abunzi are better because a lot of cases are settled without having to be referred to higher-level bodies”\textsuperscript{131}. For several litigants, the decisions handed down by the mediation committees “have more value”. Also regularly mentioned were the mediators' commitment, diligence and organization (12 respondents) as well as the speed with which they handled disputes (4 respondents).

Let us attempt to sum up litigants' perceptions of mediators as opposed to judges, and of mediators as opposed to local authorities. The ambivalence of some comments comes out clearly: to take just one example, the fact that the Abunzi are part of the community is presented both as an advantage (closeness) and a disadvantage (conflict of interests). These differences in perception obviously come in part from the respondents' feelings of anger or satisfaction at the

\textsuperscript{131} Baseline study focus group/Follow-up baseline study focus group. The focus groups expressed a preference for the mediators over the local authorities (76% / 80%).
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time of the interview. But the duality of the answers also reveals three parallel needs:

- the need for justice to be “serious” and substantiated;
- the need for justice to be independent and impartial;
- the need for justice to be carried out.

In one way or another, litigants all stress the importance of investigations being thorough and based on well-informed testimony and knowledge of both the local context and current legislation. Interestingly, at no time was customary law put forward as a means of ensuring justice. Secondly, arbiters who are part of the local community run the risk of being influenced by personal interests or relations within the community; this explains respondents' preference for the courts and then (compared with local authorities) for the Abunzi, both of which are felt to provide a necessary “distance”. Finally, these two institutionalized conflict resolution bodies seem to be the only ones to ensure that a decision or verdict will be enforced. The local authorities do not appear to have enough credibility to satisfy the litigants.

These findings suggest that, once trained and familiar with the content of modern legislation, mediation committees offer an ideal compromise, bringing together local knowledge, mediation skills, legal expertise and public acknowledgement of their pre-judicial role. Mediators' knowledge of the law appears to be stronger when it comes to land disputes; this is a fundamental requirement, given the vital importance in Rwanda of access to land. Banking on the guarantees provided by the law, parties are not usually satisfied with half measures (mediation). In the May 2011 follow-up baseline study, several litigants noted a higher level of expertise in cell mediation committees with newly elected members, trained in the second half of 2010. In the two comparisons discussed above (mediators/judges and mediators/local authorities), preference for the Abunzi rose
between 2009 and 2011 (from 28% to 42% and from 66% to 75%\textsuperscript{132}), with the complementary nature of the mediation committees and Primary Courts emerging more clearly in 2011. The follow-up baseline study was, however, carried out too soon for any significant opinions on the sector mediation committees to be identified and compared.

3.4. Summary

The observations carried out and the accounts given by the litigants interviewed indicate that mediation is attempted and encouraged by the Abunzi in only slightly over half of cases. This score is very low in relation to what is laid down by the law, particularly as only a third of these mediation attempts actually succeed (15% to 20% of all cases heard). It is not possible at this stage to assess whether a new trend

\textsuperscript{132} The trend is less clear at the focus group level. We have already noted that the focus groups preferred the mediators over the local authorities in 76% (2009) and 80% (2011) of cases. The focus groups also rated the Abunzi less favourably than Primary Court judges compared with two years previously: in 2009, a small majority of the respondents (58%) had preferred the mediation committees, compared with 46% in 2011. While the arguments put forward in both cases were more or less identical to those already enumerated, these figures should be treated with caution. As already mentioned, only a minority of the focus group participants had had personal experience of Abunzi proceedings (see footnote 13); consequently, the number of citizens with experience of a Primary Court was even smaller. The fact remains that the focus groups tended to assess the Abunzi more favourably than the litigants who were interviewed individually. This may be explained by the scepticism local communities are likely to feel towards the courts, seen as distant and potentially less “human”: “the courts are biased because only one person takes the decision there while with the Abunzi there are three of them”; “the Abunzi take the parties' poverty into account while the courts just apply the law”; “[court proceedings] are expensive, with legal fees, lawyers and fines”. Three people also mentioned widespread “corruption” in the courts. (Baseline study focus group /Follow-up baseline study focus group).
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is emerging as a result of new members of mediation committees being elected in 2010. The sometimes long, multiple proceedings many litigants have to go through do, however, have an impact on their attitudes to the Abunzi: a number of litigants are resistant to the idea of reaching an amicable agreement and must bear their share of responsibility when mediation fails. Land disputes are also more likely to be settled by means of a decision. Of the litigants whose dispute was settled through mediation, 65% expect the conflict to remain settled in the long term, a view shared by only 41% of those whose cases were resolved by a decision. Three-quarters of the latter would have preferred to find common ground with their opponents, particularly if this would have avoided proceedings being drawn out. This does not prevent a majority of litigants (58%-72%) from claiming that the Primary Courts are better placed to settle disputes than the cell mediation committees. The Primary Courts are prized for their professionalism, mastery of procedures, laws and investigation techniques, and greater integrity. The Abunzi, on the other hand, are valued for their practical knowledge of the local context, their closeness to the community and the speed with which they reach decisions. Over two-thirds of litigants value the institutional function of the mediators, preferring them to the local authorities for settling disputes. Thorough knowledge of current legislation is essential, particularly when it comes to disputed parcels of land.
CHAPTER 4
CLOSING OF THE HEARING

The mediation committee Law devotes one article to the closing of the hearing or “proposed settlement”\textsuperscript{133}. In the actual text of the law, it is, however, the phrase “decision making” that is more commonly used, creating ambiguity as to the expected outcome of the mediation session. When the parties fail to reach agreement on the terms of the mediation, the law requires the three \textit{Abunzi} chosen to settle the dispute (and only those three) to withdraw for deliberation. Once they have reached a decision, according to the Internal Rules and Regulations, “the Chairperson of the panel shall immediately read in public the decision taken”\textsuperscript{134}.

Irrespective of whether the outcome is mediation or a decision, the law stipulates that “the decision shall be written, signed on every page [by all the mediators on the panel and the parties] and available within a period not exceeding ten (10) days from the day on which

\textsuperscript{133} Article 22, Organic Law N\textdegree. 02/2010/OL.

\textsuperscript{134} Article 24, Ministerial Order N\textdegree. 82/08.11.
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the decision was made”, and that the minutes must be kept by the executive secretary, who is responsible for submitting them to the parties\textsuperscript{135}. The issue of recording – and signing – the minutes of the hearing is of great importance, given that the deadline for appealing against a decision (generally to the sector mediation committee) is one month from the date on which the litigant is notified of the written decision\textsuperscript{136}.

4.1. Deliberation and decision making

It will be recalled that, according to our findings, mediation hearings result in a decision being delivered in 80% of cases. During the deliberation process, the procedure is rarely respected: the three Abunzi on the panel withdraw, as the law requires, in only 50%/37% of cases\textsuperscript{137}. The scenario described by litigants departed from the norm 52%/41% of the time\textsuperscript{138}; in 2009, 45% of respondents explicitly mentioned more than three Abunzi withdrawing: the chairperson of

\textsuperscript{135} Article 22, Organic Law N\textdegree{} 02/2010/OL.

\textsuperscript{136} Article 26, Organic Law N\textdegree{} 02/2010/OL. A detailed examination of the Law reveals confusion and inconsistency on the issue of notifying litigants of a decision and on the deadline for appealing against a decision. In the French text, paragraphs 2 and 3 of Article 26 stipulate that “the Secretary of the Mediation Committee [editor’s note: it is the “cell/sector executive secretary” that is being referred to here] shall notify the parties of the written decision of the Mediation Committee within a period not exceeding five (5) days from the day of receipt by him/her of the decision from the Mediation Committee”. The parties are obliged to collect the written decision within a period not exceeding fifteen (15) days from the day its drafting is finalized. [Translator’s note: in the English version, the Law refers to “the day it is made available”). Following that, the appeal period begins to run. Note that reference is successively made to the date of notification of the written decision to the parties and to the day on which the drafting of the decision is finalized as the key time factor for lodging an appeal, resulting in a variation in the number of days available to litigants to do so. An amendment to the Law seems to be needed to bring together in one Article and paragraph all the requirements for notifying parties of a decision and the deadline for bringing an appeal, making the law clearer and more coherent.

\textsuperscript{137} Phase 1 monitoring /Phase 2 monitoring.

\textsuperscript{138} Baseline study/ follow-up baseline study.
the committee and/or all the Abunzi present during the hearing often joined in the deliberation. Any change in the composition of the panel at the decision-making stage is a serious breach of procedure as it may result in Abunzi who did not attend the mediation hearing in its entirety taking part in decision making. In addition, this type of situation can give rise to all sorts of conjecture, as in the case of this farmer, who had nevertheless won his land dispute case: “The chairman, too, withdrew with the panel. We think that's because he receives litigants in his bar after they buy him beer.”139

Our observations also revealed cases where no Umwunzi withdrew and the decision was made in public; or worse, where the decision was taken in the absence of the parties several hours or days after the hearing closed, obliging the parties to come back to learn the outcome (“The mediators have one day to reach their decision; we don't know how many and which of them will be involved in the actual decision making”140). Strict compliance with the rule that the decision must be made by the three Abunzi on the panel – and only by them – is a sine qua non for the Primary Court judges to be able to issue an enforcement order for the written decision submitted by the parties (when it is necessary to enforce compliance from the “losing” party – see Section 4.3 below).

Experience shows that mediators' decisions are better accepted by the parties when they are fully justified. It is for this reason that RCN Justice & Démocratie encourages the Abunzi to be as explicit as possible in explaining their reasoning. Our research shows that litigants react differently to the explanations provided by the Abunzi to justify a decision according to whether they “win” or “lose” their

139 Baseline study, Kamonyi district.
140 Follow-up baseline study focus group, Kamonyi district. In this last case, there is no way of proving that “outsiders” did not take part in the decision making. When a decision is deferred and communicated to parties later, it is the modus operandi of the justice system that is called into question.
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case. Of those who “win”, 83%/89% feel that the Abunzi clearly explain the reasoning behind their decision, in contrast with only 40%/61% of those who “lose”\textsuperscript{141}. “They ask for evidence but don’t explain why some pieces of evidence are more conclusive than others”, complained a mechanic from Gakenke district, who had “won” his case at the mediation committee hearing\textsuperscript{142}. Of the litigants interviewed at the end of a hearing, 68%/78% claimed they had clearly understood the reasoning behind the decision\textsuperscript{143}. They acknowledged that the mediators rarely made mention of the law to justify a decision (three cases out of 93 decisions), noting that for the most part they based their decisions on testimony, reflecting the importance given to the evidence presented. Our monitoring of the hearings confirmed the “gradual improvement” in the Abunzi’s practices suggested by the figures above: the percentage of decisions for which clear justification was given rose sharply from 47% in the first phase to 86% in the second (though for a smaller number of cases). The various training sessions run for mediators in recent months are likely to have stressed the importance of explaining the reasoning behind a decision.

The mediation committee Law stipulates that in the case of a decision the minutes of the mediation hearing must contain, among other things, “the mediation decision with which all parties agree” and “the mediation decision with which one of the parties does not adhere, if any”\textsuperscript{144}. In practice, it is advisable for litigants who do not

\textsuperscript{141} Baseline study, follow-up baseline study.
\textsuperscript{142} Baseline study.
\textsuperscript{143} Phase 1 interviews/Phase 2 interviews phase.
\textsuperscript{144} Article 22, Organic Law N\textdegree 02/2010/OL. In addition to the content of the decision, the Law requires the minutes to contain identification of the parties, a summary of the dispute, the claims made by the parties involved, the date and place of the mediation hearing, the signatures or fingerprints of the litigants, the mediators' names and signatures or fingerprints and the rapporteur's name and signature/fingerprint. The absence of any one of these elements means that the courts cannot act on any enforcement orders (see Footnote 177).
agree with one or more decisions to express their opposition verbally in public; in this way, the community is made a witness in parallel to what is or is not recorded in the minutes.

When the panel secretary fails to keep an accurate written record of the views expressed, whether through inattention or ill will, points of agreement and disagreement are not always correctly noted\textsuperscript{145}. Nor, in practice, are the parties always given the opportunity to react to the decision taken. For 46%/31% of the litigants interviewed, the Abunzi either do not offer the parties the chance to react or disregard any reactions\textsuperscript{146}; the figure that emerged from monitoring of hearings in early 2010 (phase 1) was even higher (56%). In the second phase of monitoring, the “losing” parties were found to react in less than half the cases observed (46%); over time, however, fewer litigants seem to have been prevented from expressing their reactions, though many saw no point in voicing their opposition to a decision when the mediators would pay it no heed. “You can give your opinion, but they can't increase or decrease anything”, said a farmer who had tried unsuccessfully to have the division of land in a succession re-examined\textsuperscript{147}. While this is true when proceedings have been concluded, in the case that the position of one or both parties is incorrectly recorded, it is the content of the written minutes to which any appeal body is likely to pay attention, hence the importance of expressing disagreement verbally.

\textsuperscript{145} By the same logic, when an Umwunzi is opposed to the decision of his or her two colleagues in a majority vote (where there is no consensus), the reasons for the “dissenting opinion” are required to be set out in the minutes (for use in any future proceedings). See Article 22, Organic Law N°. 02/2010/OL.

\textsuperscript{146} Baseline study.

\textsuperscript{147} Baseline study, Kamonyi district.
4.2. Communication of the minutes and appeals

In 2009, only two-thirds of respondents (68%)\(^{148}\) reported receiving the minutes of the mediation session within a reasonable period of time, i.e. sufficiently quickly to be able to appeal against a mediation committee decision, if necessary. The other litigants complained that their time was wasted by having to wait several weeks to receive the minutes or, in some cases, not receiving them at all\(^ {149}\). There were various reasons for this, such as the unavailability of the cell executive secretary, who is responsible for drafting the minutes. The problem was partially solved by the 2010 amendment to the mediation committee Law and by changes in the role of executive secretaries (see Introduction).

In 2011, 75% of litigants stated that they were satisfied with the time taken to receive the minutes, around two weeks after the ruling in the vast majority of cases\(^ {150}\). Current delays in receiving the minutes are generally attributed to various illicit practices and to the prolonged absence of certain mediators who must sign them: the mediators may keep the copy intended for the “winning” party to prevent a decision from being enforced while the appeal period is still pending; the original minutes may be given to the “losing party”, precisely so that he or she can appeal (“Only the party that wanted to appeal was given the minutes”), etc. In cases where the two parties are reconciled, the mediators may also fail to keep minutes, contrary to the provisions of the law.

The difficulty of making copies of the original minutes remains. The mediators often ask litigants to contribute to photocopying costs

\(^{148}\) Baseline study.

\(^{149}\) “It isn’t easy to get copies of the decision. We’re told to come back on such a date, and when we do, they give us another appointment. We have no choice but to keep going back and forwards”. Phase 2 interviews, Gatsibo district.

\(^{150}\) Follow-up baseline study.
when no paper is available. Several litigants acknowledged paying in order to have the minutes quickly; in contrast, “the poor spend days and days waiting for their copies of the decision”, according to a cobbler who was highly critical of the Abunzi's stance. The focus groups confirmed this state of affairs: 81% stated that, though they received the minutes of decisions in time, “how quickly the minutes were made available was conditional on paying photocopying costs of Rwf 300 or 500”.

The money or paper requested for photocopying and/or taking notes is the main contribution required by the mediators over and above their work (“they told us that we had to pay Rwf 1000 to get copies of the decision, which I don't like”). If the contribution the Abunzi sometimes request for making a field visit and other “gifts” are included, between 18% and 45% of litigants claimed they were confronted with some form of (financial) condition being imposed; the law, on the other hand, specifies that submitting a case to the mediators should not involve the litigants in any expense. To cover

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151 It is the Executive Secretaries who are responsible for making the minutes available but the Abunzi who have to duplicate the documents and put their original seal on each copy; some Primary Courts may otherwise consider the document invalid. If paper is available, some mediation committees try to complete all the stages of the procedure immediately, including decisions and comments, so that the minutes can be given to the parties following the hearing. There is some confusion here in that mediators think they are the ones who have to send the minutes to the parties as soon as possible. In fact, ten days is considered perfectly acceptable for sending the copies of the minutes to the Executive Secretary. Standard forms for minutes, such as those produced by Justice & Démocratie and made available to the Abunzi, obviously save considerable time when documents have to be copied.

152 Baseline study, Kamonyi district.

153 Baseline study focus group. On this particular question, several groups of respondents gave very different answers, indicating that the circumstances and demands made by mediators may differ considerably from one person to another and from one day to another.

154 Phase 2 interviews, Gatsibo district.

155 Phase 1 interviews and follow-up baseline study.

156 Baseline study. The figure was 33% for Phase 2.
their working expenses or, in rare cases, for financial gain, the Abunzi may invent “novel” and illegal types of payment. To give an example, one woman told of losing her case at the Abunzi hearing because she had not paid in advance (“They asked each of us for Rwf 6000 [saying that] they would give the money back to the person who won”); she subsequently won her case in court\textsuperscript{157}. The same type of “contract” was reported for covering field visit expenses. Demands may be made “on the quiet” or in a roundabout way: “The Abunzi don’t ask for anything directly; they make you come and go, and so it goes on ... you end up guessing what they want and give something to the chairperson”. Many litigants mentioned another apparently widespread practice: “If you win, you give them beer.”

In 2009, half of the focus groups confirmed that financial conditions could be imposed on litigants (47% of the women's groups and 56% of the men's), a figure that had fallen somewhat by 2011 (35%). The monitoring conducted in early 2010\textsuperscript{158} revealed that parties had to make some kind of payment in 24% of cases (a figure likely to be higher if “arrangements” not observed by researchers are added). This situation is doubly problematic as, over and above the bribery and the corruption of justice some payment practices entail, they run counter to the whole ethos of mediation. Litigants who have spent money on proceedings will do all they can to make their opponents lose and get back the sum (however modest) they have invested; as a result, the idea of mediation does not even arise. And mediators who suggest to parties that they “share” the costs of proceedings and that

\textsuperscript{157} Baseline study, Gakenke district. More seriously and more unusually, another litigant reported being asked by some Abunzi to pay Rwf 100,000 (around €125) in exchange for a favourable decision in a dispute where he was accused of having illegally removed stones estimated to be worth two millions Rwandan francs from a quarry. The litigant in question said he had turned down the offer (as he was unable to get the money) and had consequently lost his case at the Abunzi hearing. The sector mediators had also found against him and at the time of the interview the man talked of taking the dispute to the Primary Court. (Follow-up baseline study, Kamonyi district).

\textsuperscript{158} Phase 1 monitoring (January 2010-June 2010).
only the “winner” be reimbursed then find themselves under a “contractual” obligation to assign a winner and a loser.

Whether or not it is related to these competing interests, the **decision to file an appeal** is a constant after the *Abunzi’s* decisions, sometimes even after successful mediation. Our 2011 follow-up baseline study found that a quarter of the litigants interviewed (26%) had decided for one reason or another to appeal against the cell *Abunzi’s* decision (the figure rises to 81% for those who considered they had lost all or part of their claim)\(^{159}\). Of the litigants interviewed at the close of hearings observed between July 2010 and March 2011, 37% expressed the same intention. During the previous observation phase, 29% had expressed their determination to contest the mediators' decision (or the possibility that they might do so), with slightly under half claiming they had clearly been “had”\(^ {160}\). Of the remaining 71%, one-sixth of the litigants also felt they had been “had” but did not intend to pursue proceedings at the Primary Court for lack of time, means or the “courage” needed (“*I’m not going to go to court; in any case, I don’t even know how to go about it*”\(^ {161}\)). No differences were found in men's and women's reactions to mediators' decisions.

The tenacity of some litigants automatically affects the opposing party. In 2009, over a third (36%)\(^ {162}\) of litigants who had appeared before the *Abunzi* found themselves willingly or unwillingly involved

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\(^{159}\) Follow-up baseline study. It should be noted that the law offers a party who is absent when a decision is made the possibility of applying for this decision to be reviewed within a period of ten days after notification of the mediators' decision; in this case, the mediation committee that took the decision must re-examine the case. (Article 19, Organic Law N° 02/2010/OL. It is accordingly only after the above-mentioned ten-day period has elapsed that an appeal can officially be made.

\(^{160}\) Phase 1 interviews.

\(^{161}\) Phase 1 interviews, Musanze district.

\(^{162}\) Baseline study.
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in a procedure that went beyond the cell-level mediators. As previously mentioned, appealing against a cell *Abunzi* decision involves bringing the case to a Primary Court, with all the time and expense that involves for the parties\(^{163}\). Two years later, now that appeals against *Abunzi* decisions are heard by sector mediation committees, the figure has risen to 47%\(^{164}\).

Should we conclude from this that the reintroduction of sector mediation committees has led to more appeals from frustrated litigants than before? This is the opinion of several *Abunzi* whom we met in May 2011. In their view, the fact that the “appeals chamber” is now closer to the community has encouraged many litigants to try their luck again, especially as they no longer have to pay anything to bring proceedings. However, a large majority of their fellow mediators did not agree: for them, the cell-level *Abunzi*'s accumulated experience and expertise over the years have earned them respect from litigants, who are less inclined than previously to contest the decisions handed down. One cell *Umwunzi* from Rwamagana district claimed that “today, we are achieving more cases of successful mediation than before, thanks to the experience we have gained”\(^{165}\). Should we believe the figures, or the views of the mediators themselves? The question is still open. We need to obtain a wider perspective in order to be able to identify a clear tendency; it was only recently that sector mediation committees were reintroduced. In addition, some litigants giving information on cases

\(^{163}\) A Primary Court president told us that only the plaintiff (the party that brings the case) has to pay legal fees (Rwf 2000); of course, the defendant also has to travel to court, sometimes on several occasions. The services of a lawyer start from Rwf 100,000 (flat fee for a case).

\(^{164}\) Follow-up baseline study.

\(^{165}\) Phase 2 interviews.
Closing of the hearing

handled before June 2010 may have been included among the respondents interviewed during the follow-up baseline study\textsuperscript{166}.

On the other hand, there was general agreement that it had become rare for disputes handled by the cell mediation committees to reach the Primary Court after being heard by the sector Abunzi committees. The acknowledged “competence” of the sector Abunzi was again given as a reason for this: “The sector mediation committees have a knowledge of the legislation that the cell Abunzi lack”, explained a sector executive secretary from Rusizi district. A sector Umwunzi from Rulindo district added: “The parties feel that the sector mediation committees conduct their work with transparency.”\textsuperscript{167} The implication here is that, thanks to the “professionalism” of the sector mediation committees, there is no need to go to court to obtain satisfaction. A recent survey on a sample of 12 cells in three districts bore out this finding: in Rulindo, Kamonyi and Rwamagana, only a small minority of disputes go beyond the cell mediation committee stage, and only 4% of cases reach the Primary Courts\textsuperscript{168}. For the

\textsuperscript{166} The samples of respondents for the follow-up baseline study and second phase of post-hearing interviews were smaller than for the baseline study/Phase 1 interviews.

\textsuperscript{167} Phase 2 interviews.

\textsuperscript{168} The ratios for the “number of disputes handled by the cell mediation committee / sector mediation committee / Primary Court” was as follows for the period August 2010 to May 2011: 56/5/1, 121/7/0, 17/5/1, 32/2/0 (Base and Kinihira sectors, Rulindo district); 72/31/2, 10/1/0, 22/9/0, 21/5/0 (Runda and Gacurabwenge sectors, Kamonyi district); 20/1/0, 26/4/1, 21/3/2, 14/6/0 (Munyiginya and Musha sectors, Rwamagana district). The smaller proportion of disputes reaching the Primary Courts today is offset by the larger number of disputes submitted to them following a change in the new 2010 Law on mediation committees: this specifies that disputes involving parties resident in different cells must be submitted to the Primary Court of the jurisdiction (Article 10, Organic Law N°. 02/2010/OL). This is different from the previous practice whereby cell mediation committees could deal with such cases. Many of our respondents expressed their dissatisfaction with this new provision, describing the difficulties it caused for litigants. One Primary Court president said: ‘I see a kind of injustice in the fact that, for example, two parties living in the same cell, one of whom steals a car worth Rwf 2.5 million from the other, can take the case
purposes of comparison, a previous nationwide study by RCN Justice & Démocratie in 2007-2008 found 25% of disputes passing from the cell mediation committees to the Primary Courts\textsuperscript{169}. In short, the practical goal assigned to the sector Abunzi of absorbing a maximum of litigants’ appeals (so as to reduce the burden on the courts) seems to be bringing the results the architects of the 2010 mediation committee Law intended. We should not, however, discount the possibility that some parties whose cases are dismissed by the sector mediation committee may drop their claims due to lack of funds, family pressure or unfamiliarity with the procedures to follow.

Examination of the small number of cases that did end up in Primary Courts after the sector mediation committees were reintroduced suggests that these very long proceedings result from one or other of the parties being persistent, convinced they are in the right and making a court “victory” a question of principle. It is often a defendant who appealed to the sector mediators against an unfavourable decision by the cell mediators who goes on to appeal to the Primary Court; the aim is either to make a second attempt at having the decision overturned or, when the sector mediators’ decision was in the defendant's favour, to obtain a larger share of a plot of land, for example.

\textsuperscript{169} RCN Justice & Démocratie (2009). Chapter 3 pp. 37-40. The action research carried out by RCN Justice & Démocratie for the International Development Law Organization (IDLO) revealed similar figures: 27% of the decisions delivered by the cell mediation committees were the subject of appeals in the Primary Courts. See RCN Justice & Démocratie, IDLO (2011).
In September 2010, Séraphine (not her real name) submitted her dispute with Eliezer (Ibid.) to the cell mediators: she claimed that Eliezer had never paid her for eleven truckloads of stones. On 19 October, the Abunzi decided that Eliezer should pay for the consignment to which Séraphine referred. At the beginning of November, Eliezer appealed against the decision at the sector level. The case was not heard until mid-March and, after a field visit by the mediators, their decision was announced on 29 April 2011: Eliezer was to pay Rwf 60,000 for the equivalent of six truckloads of stones. This verdict does not appear to have satisfied Eliezer, who chose to appeal to the Primary Court on 16 May 2011. The case file indicated that the first hearing would be six months later, on 10 November 2011. (Consultation of the registers, May 2011).

At the time of writing, the number of final verdicts available in disputes handled by the new mediation committees (2010) was too small to enable us to identify trends in the “quality” of the decisions taken by the various bodies concerned, but the waiting time imposed on the parties was striking. The court's first hearing of a dispute may be scheduled up to 13 months after a case is submitted to the cell mediation committee. Such delays clearly serve no-one's interests.

### 4.3. Time frame for dispute settlement

The time frame for dispute settlement procedures is the final point to be covered in this section and it is an essential one. To explain why there tend to be fewer appeals today against the decisions made by cell mediation committees, one cell Umwunzi suggested that the
parties ask: “What purpose does it still serve to take a case to the Abunzi?”

This question reminds us that, while limiting the number of disputes submitted to the Primary Courts and reducing the costs incurred, institutionalizing the sector mediation committees has added to the list of mediation bodies parties have to go through in practice (see Introduction). The sector mediation committees are, in general, made up of the most experienced Abunzi, reputed to be the best at their job; despite this, a certain fatigue can be detected in some litigants, notably those who have long been convinced that a decision is essential to the settlement of their dispute.

Our study revealed that between 39% and 48% of the litigants we met at close of hearings were involved in disputes over three months old; more than a third (43%/33%) of these cases had lasted over a year, if all the different bodies are taken together. The majority of cases concerned unresolved family issues or disputes arising from the 1994 genocide. The many levels of mediation and court can prolong the procedure indefinitely. “We tried to come to an agreement within the family in February, but the other party didn't accept the decisions made. We also went twice to the nyumbakumi but that failed, too, and now we're taking the case to the Abunzi”, said one man who had been battling a sister and three of her sons for five years over an inheritance dispute.

This type of scenario pushes many litigants to demand a decision from the mediators; tired of going from one failure to the next, they want matters to be settled as quickly as possible so that they can get on with their lives. This “impatience” is felt more strongly by the

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170 Phase 2 interviews, Rwamagana district.
171 Phase 1 interviews / Phase 2.
172 Name formerly given to the leaders responsible for groups of ten households.
173 Phase 1 interviews, Rulindo district.
young than by the elderly, who are more likely to be “socialized” as to the importance of reconciliation. It also appears that the growing competition from year to year for access to land on the Rwandan hills is making litigants more intransigent. Finally, the longer a dispute lasts, the more the conflicting parties' positions harden and the less likely it is that an understanding will be reached. This leads us to the concept of the “timeliness” specific to the conflict resolution process, mentioned above.
Jean-Emmanuel (not his real name) and several of his brothers accused Méthode (Ibid.), a family member; of appropriating part of the land their mother had received as an umunani (a donation made to children by their parents, while still alive). During the autumn of 2009, Jean-Emmanuel and his brothers submitted their case to the Abunzi, who ruled in their favour: Méthode could only inherit part of the ingarigari (land and a house kept by the parents for their own usage) from the family. Dissatisfied with the decision, on 5 February 2010, Méthode submitted an appeal to the Primary Court, as the sector mediation committees did not yet exist. It was not until seven months later (1 September 2010) that the case was given its first hearing. In May 2011, the records showed that no fewer than four hearings (8/11/2010, 3/3/2011, 11/4/2011 and 20/4/2011) had taken place since then but that the case had not yet been resolved. The next hearing was scheduled for 8 September 2011, almost two years after the case was heard by the cell mediators\footnote{Consultation of Primary Court registers, May 2011}.

The length of proceedings is often due to all the to-ing and fro-ing and referrals of cases between different institutions, either because the mediators ask the parties to discuss their positions again as a family or because the Primary Court sends the case back to the mediators\footnote{In the framework of the pilot study carried out for the IDLO, it was established that 48% of the decisions delivered by the cell Abunzi (Rulindo district) had been handled by the previous Abunzi.}: “Our case had been handled by the previous Abunzi \footnote{From the viewpoint of the new Law on mediation committees (2010), this case of a dispute submitted to the Primary Court, which had not received a first hearing at the time the law entered into force, should have been passed to the sector mediation committee to handle (Article 34, Organic Law N°. 02/2010/OL).}.”
Committee. When we got to court, we were asked to resubmit our case to the cell Abunzi because the first decision did not mention all the rightful beneficiaries of the land in question." 176 The many different conflict resolution bodies that operate at the local level (family council, elders, umudugudu) and their lack of professionalism from a legal viewpoint leads to interpretations that often vary from one level to another, or to reversals of the situation that may or may not be expected by the litigants; the 2007-2008 study revealed that only one-third of disputes were settled in the same way by all the bodies that had handled them 177.

Aware that decisions are not always well-founded, parties in dispute over ownership of a parcel of land, have no hesitation in filing several appeals, especially as, at the local level, the price to be “paid”, mainly in terms of time, is infinitely small compared to the value of the land. While enforcement of decisions is key to justice being fully done, this also contributes unwittingly to prolonging the procedures for settling disputes, in view of all the steps and conditions required, the waiting time and the many quirks of the system. Any litigant who wishes to have a decision in his favour enforced by the mediators (or courts) when the “losing” party appears to oppose this must obtain an enforcement order from the Primary Court and then take it to the cell executive secretary, who acts as a non-professional bailiff.

When Primary Court presidents study a decision made by the Abunzi, they may point out any breaches of procedure and/or misjudgments in relation to existing legislation before issuing an enforcement order; the “winning” litigants then have to resubmit their case to the

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176 Follow-up baseline study, Kayonza district.
177 RCN Justice & Démocratie (2009).
Functioning of the mediation committees

mediation committees for clarification or correction\textsuperscript{178}. Once approved, enforcement of a decision is often postponed: parallel research by RCN Justice & Démocratie revealed that decisions were enforced in the statutory three months in only slightly over half (52\%) of cases\textsuperscript{179}. In other cases, opposition is made to decisions that have been authorized for enforcement and are about to be carried out; though theoretically inadmissible, such objections may be taken into consideration.

\textsuperscript{178} Before issuing an enforcement order, Primary Court presidents must ensure that: 1) the mediation minutes announcing the decision that is to be enforced contain each of the nine elements required by law (see footnote 144), 2) the decision made by the Abunzi comes within their jurisdiction, 3) the decision was made and recorded by only three mediators, 4) the one-month period within which the “losing” party can appeal has expired, 5) the substance of the decision complies with existing legislation and can be enforced, 6) the decision or its enforcement are not “contrary to public order”, 7) [if a litigant is represented by a third party] the requisite authorization is valid. (Article 24, Organic Law N°. 02/2010/OL; Phase 2 interviews)

\textsuperscript{179} The data was collected in 50 cells in Rwanda on the basis of decisions enforced in 2008-2009.
In July 2007, Félicien (not his real name) claimed ownership of a field in Gakenke district. He went to see the leader of his village council (umudugdu), who sent him to the cell executive secretary (akagari), where the defendant refused to appear. The defendant also refused to appear before the Abunzi, to whom the case had been submitted; the absent defendant was declared to have lost the case (October 2007). Two months later (December 2007), Félicien went to the registrar of the Primary Court, who gave him an enforcement order, authorizing the Abunzi's decision to be enforced. At that point, the other party, who had been absent till then, seeing himself deprived of one of his fields, opposed enforcement of the decision and referred the matter to the same court which had validated it. Félicien had to wait six months before a judge dealt with the case (August 2008), then a further 30 days for the verdict (September 2008): the court ordered the case to be re-examined by the mediators. A second hearing before the same Abunzi as in October 2007 was scheduled for much later, in December 2009. (Phase 1 “post-hearing” interviews (January to June, 2010), Gakenke district).

Once again, observation and feedback from the field show improvement in practices and coordination between the judicial authorities. Consultation of the registers of three Primary Courts in May 2011 confirmed that the mediators were becoming better at respecting legislation, justifying decisions and complying with procedures: in 60% to 90% of cases, enforcement orders requested by litigants between August 2010 and May 2011 had been issued by Primary Court presidents. Two of the presidents (the third was a recent appointment) stated that before the summer of 2010 they

180 Ibid.
had sent a majority of decisions back to the Abunzi for re-examination. The fact remains, however, that 37% of the litigants we met between July 2010 and March 2011 were starting proceedings for the second time with the same cell mediation committee.

4.4. Summary

When a decision is made, the requirement that only the three Abunzi selected by the parties should withdraw is respected in less than half the cases. On the other hand, our data suggest that the mediators attach greater importance than in the past to clearly justifying their decisions. In half of all cases, litigants who contest (all or part of) the decisions taken do not express their opposition in public; it would, however, be preferable for the community to bear witness in cases of disagreement. In a quarter of cases, the litigants interviewed report experiencing delays in receiving the minutes. They are also often asked to make a financial contribution in order to obtain a copy; more than a fifth of respondents report being required, more or less openly, to make some sort of payment to the Abunzi or to give “presents”. Up to a third of the litigants we met in 2010/2011 (81% of those who had “lost” their case) expressed the intention of appealing against the decision to the sector mediation committees. Mere words? A majority of the mediators we met in the field reported a decline in the number of cell decisions going to appeal. And disputes submitted to the cell Abunzi that ended up in the Primary Courts appeared to be even less frequent. Nevertheless, almost half the litigants interviewed in 2011 reported their dispute going beyond the cell mediation committee following an appeal. The length of proceedings, both “upstream” and “downstream” from the cell Abunzi committee hearings, discourages many weary litigants who no longer believe mediation to be possible; more than a third of respondents were involved in cases that had dragged on for over three months.
CONCLUSION

Due to the scope of our research, there is inevitably a margin of error: the study was carried out in several different locations over a period of time (2009-2011) and involved the collaboration of a large number of litigants, researchers and analysts. While at all stages of the research the most representative samples of the functioning of mediation committees in Rwanda were sought, the statistics presented are necessarily limited. Finally, care should be taken in interpreting some of the answers given by litigants, for example, on the subject of gender equality in Abunzi hearings or on reconciliation as an absolute ideal, which may have been influenced by the authorities' emphasis on the need for unity and reconciliation.

Having said that, the tireless monitoring carried out by RCN Justice & Démocratie has enabled several major trends to be identified in the Abunzi's work nationwide, both as perceived by the litigants themselves and as observed by the RCN Justice & Démocratie and Haguruka researchers.
General observations

Before summarizing our recommendations, here are some general observations that emerged from mediation committee monitoring. Based on evidence from the baseline studies and post-hearing interviews, the subjective impressions of the litigants are often similar to the more objective observations made by the researchers who monitored the hearings. There is more divergence when it comes to allocation of speaking time and mediator bias. The mediators may well have made an effort to include everyone in the discussion when the researchers were present. Overall, however, the mediators received high ratings for the speed with which they handle disputes, their commitment to serving the community and their respect for women's rights. On the other hand, ratings were considerably lower when it came to the little account mediators take of disadvantaged litigants and their witnesses, their unwillingness to attempt mediation, inadequate communication and delays in providing litigants with the hearing minutes.

While the sex of the Abunzi or litigants had no influence on the mediators' practices, they do appear to attach particular importance to the cause of women in general. The litigants' socioeconomic status is more significant; many respondents reported cases of discrimination against widows or “those who have nothing to give” to the advantage of “rich people from Kigali” or those with influence. As far as the subjects of dispute are concerned, it emerged that in land dispute cases both the Abunzi and the litigants were less likely to attempt mediation, leading to a lower success rate in this domain. Litigants involved in land disputes also expressed a clear preference for conflicts to be settled in court (judges “know the law better”). Geographical location does not appear to influence mediators' practices, although the intensity of a dispute may vary from one
region to another (for example, where land is highly disputed following the return of former exiles).

Some of the statistics suggest an improvement over time in mediators' observed and reported practices between the first surveys in December 2009 and the last interviews conducted in May 2011. Since the mediation committees were institutionalized in 2004, the Abunzi and litigants have had the chance gradually to familiarize themselves with the laws in force and the rationale behind mediation. In concrete terms, the Ministry of Justice has organized a growing number of training sessions for the Abunzi since the current committees were elected in June/July 2010.

The study reveals many fundamental points of procedure that could be improved to ensure that mediators' practices correspond more closely to the provisions of the mediation committee Law and other regulations, and to enable the Abunzi's mediation, decisions and conclusions to gain in credibility and serve the cause of justice more effectively. The main procedural irregularities concern:

a) failure to explain the options available for choosing the three Abunzi to deal with the dispute;
b) failure to give a balanced hearing to the parties to the dispute and certain witnesses;
c) insufficient attempts to reconcile the parties;
d) participation of more than three Abunzi in the deliberation;
e) negligence in keeping and disseminating the hearing minutes;
f) requiring (financial) contributions in some cases from litigants.
g) Following on from the Ministry of Justice's efforts to date, ongoing training is necessary to improve the mediation committees' operating procedures.
h) Standard tools (summons, minutes, registers) should be developed, validated and made available to all the country’s cell and sector mediators and executive secretaries. Account should be taken of the need repeatedly expressed by all the mediation committees we met for the necessary materials to be supplied to enable them to carry out their duties: paper, pens, staplers, files, hole punchers, ink and surveyors tape for measuring the parcels of land. We were struck by the total lack of basic necessities with which the Abunzi had to operate despite the law setting out responsibility for “providing Mediation Committees with equipment and all materials needed to perform their duties”.

Several mediators expressed the desire for the committee to have its own office so as to improve document organization and storage.

The first wish expressed by the mediators themselves was to have sufficient equipment and materials (including standard forms and registers) to carry out their duties; the importance of having their own office came third after the need for ongoing training, both on the mediation committee Law and other basic laws (Law determining the use and management of land (2005), Law on matrimonial regimes, liberalities and successions (1999)).

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181 At the end of May 2011, RCN Justice & Démocratie held a working meeting with representatives from the mediators, executive secretaries and Access to Justice Bureaux to review stakeholder satisfaction with the various pilot tools developed to date. A final draft version of the tools was sent to the Ministry of Justice in June for validation before dissemination.

182 Article 31, paragraph 7, Organic Law N°. 02/2010/OL. See also Article 9, Ministerial Order N°. 82/08.11.

183 The cell and sector mediators’ ranking was as follows: 1. Provide sufficient materials (10 occurrences); 2. Provide ongoing training (9); 3. Make an office available for the mediation committees to work in (4), Pay the mediators' health
It is indispensable that the knowledge and competence of the Abunzi continue to be improved so as to enhance the quality of the mediation committees' work. We have seen how the professionalism of judges is idealized by many respondents, leading to the belief that “when you're not in agreement with the decision taken, the courts will deliver justice”. We have already considered complaints that the Abunzi lack knowledge of the law and fail to make sufficient field visits. Despite this, many of the litigants and citizens we interviewed concede that the Abunzi have several “strengths”: knowledge of the local context, speed, and closeness to the community. And all the observers interviewed acknowledge the great progress achieved, thanks in particular to the training undertaken in the second half of 2010. In light of the added value of this training, it is essential to pursue and consolidate mediator training in a number of laws fundamental to the exercise of their functions (land tenure, succession).

The Abunzi should also receive further explanation from Primary Court judges who refer cases back to them where the law has been misinterpreted. It is not a question of turning the Abunzi into legal professionals but rather of enhancing their ability to interpret current legislation on the main issues that affect the settlement of disputes at the community level, both within and between families. If they can justify their position or reaction by invoking the provisions of the law, the Abunzi are better respected and more likely to gain litigants' support; it is then up to them to set out the terms for a mediation or decision on legal grounds that would be binding in court. The esteem

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insurance (4) and Authorize sector mediation committees to handle disputes between parties resident in different cells (4); 6. Cover travel expenses (3) and Pay special “per diem” allowances (3); 8. Improve communication between the Primary Court and mediation committee (via explanatory notes), especially when a decision is sent back to the Abunzi for review (1) (Phase 2 interviews).
Functioning of the mediation committees

in which the sector mediators are held by the population since their reintroduction in 2010 is an encouraging sign.

Similarly, training in investigation techniques would increase mediators' effectiveness and credibility when collecting data on the background to a dispute. We have already mentioned litigants' legitimate “desire for the truth” when they submit a case to the Abunzi. Better use of the evidence, testimony, sources of information and arguments at their disposal would enhance mediators' credibility and performance.

The Abunzi should also have the chance to draw on the extensive existing literature on the subject of peaceful conflict resolution. Like many other countries, Rwanda has ancestral know-how when it comes to mediating conflicts: a “fresh” perspective on current approaches and best practices in conflict resolution would complement the store of knowledge the mediators have accumulated. The general conviction underlying these proposals is that the most effective way of ensuring the rights of the most vulnerable citizens is to capitalize on – and adapt, rather than reject – the traditional practices that prevail in society. By focusing on knowledge and capacity building for the Abunzi (in regard to modern legislation), we can ensure that local stakeholders take ownership of the reforms proposed and that these reforms have a lasting impact on community justice mechanisms.

As regards women's rights, pilot studies carried out by RCN Justice & Démocratie have shown that when representatives from the National Council of Women are invited to attend Abunzi mediation hearings, their active presence helps ensure that the relevant laws are taken into account when litigants are women.

Parallel research has demonstrated that when traditional elders take part in discussion, their mediation skills and experience improve the quality of Abunzi hearings. The merit of the mediation committees as set up by the Rwandan government in 2004 is that they combine the strengths, contributions and legitimacy of community justice grounded in traditional mediation practices, on the one hand, with formal justice based on a modern interpretation of the rule of law (legislation and practices) on the other; efforts to encourage synergy between the two can but benefit litigants.

In this context, efforts still need to be made to promote the philosophy and practice of mediation so as to raise both litigants' and mediators' awareness of the mediation committees' main raison d’être at the pre-judicial level and of the ensuing benefits: sustainable resolution of conflicts at the community level, reduction in Primary Court caseloads, savings for the parties in time and money and greater chance for women to speak out for and negotiate their legal rights.

Our research revealed that mediation was actively encouraged in only slightly over half of cases. As we briefly reported in Chapter 1, successful mediation is still a rare occurrence (between 15% and 20%), even if we add the “invisible mediation” undertaken by the Abunzi outside official proceedings. In land and/or succession disputes, the litigants press the Abunzi for a clear-cut decision. It must be recognized that a party has an inalienable right to obtain justice by means of a decision; nevertheless, the behaviour of certain mediators, who act like “judges” anxious to close a case, designating offender and victim, may lead to antagonism emerging.

The mistrust that still prevails in the post-conflict context of present-day Rwanda may explain why many favour a formal decision. Others are no longer willing – or able – to believe in mediation after several failed attempts. We have described the numerous reasons that drag
disputes out, noting that the more persistent the parties are, the less likely (re)conciliation becomes. Litigants' concerns are often legitimate and raise the issue of the relevance of all the existing levels of mediation (which in practice are often imposed upon the litigants). What, then, to think of the sector mediation committees, reintroduced in June 2010, which make the conflict resolution process even longer?

We should be encouraged by the figures presented in Chapter 4 that reveal a decline in the number of disputes brought before the Primary Courts (which entail considerable expense for “non-consenting” parties – transport, lawyers' fees, various other payments). However, when conflict resolution procedures are too protracted and overlap at the local level, this raises concerns for stability and social harmony in the long term. Two suggestions may be made to reduce the number of bodies that have to be “visited” by the parties in conflict.

First, the litigants must be reminded that when they submit their case to the mediation committee, there is no legal obligation for them to have first gone through the various local mediation bodies – family council (inama y’umuryango), elders (inararibonye), village committee (komite z’imidugudu), cell executive secretary – even though this is often imposed on them. Local authorities, mediators and citizens need to be made aware of this reality, and citizens' right to submit a case to the Abunzi in the first instance, if one of the parties so wishes, should be defended. At the same time, it should be (re)explained to mediators that in no case should they send a dispute back to an informal mediation body; similarly, the local authorities have no jurisdiction to (re)examine a decision delivered by the Abunzi. If all these points are observed, a litigant who is sceptical about the chances of his or her case being resolved could reduce the number of stages involved in the process to two (cell and sector Abunzi committees) before appealing to the Primary Court, with the
possibility that in the meantime the *Abunzi* attempt to mediate or reach a decision accepted by both parties.

None of this takes away from the legitimacy of the disputing parties deciding to convene a family council meeting or consult a group of elders; in terms of *access to justice*, no-one can deny the value of the many informal mediation structures that exist at the community level. However, if we want to stimulate productive interaction between all these bodies so as to reduce the length of proceedings and ensure that justice is handed down to the litigants in a timely manner (*goal of justice*), then we must encourage transparent communication between all stakeholders. This is the second suggestion. All categories of mediator must obtain information on the stages through which the case has already gone. This guideline would help reduce the errors and breaches of procedure that occur in the absence of formal operating rules at the local level.

Finally, **the mediators are in urgent need of funding.** It is often the case that field visits are not made during investigations as they take up too much of the mediators' time. The fact that litigants are asked for financial contributions, even if only for photocopying, creates a climate of mistrust, opening the door to “illegal” financing practices and sometimes bribery. The central authorities must therefore ensure that the mediators have sufficient resources for the exercise of their functions. Moreover, even though the mediators are classified as volunteers and agree to work on an unpaid basis when elected, it seems indispensable in the short term for them to receive some sort of symbolic financial compensation, directly or indirectly, in return for their efforts.

In acknowledgement of their key importance in the chain of prejudicial proceedings, RCN Justice & Démocratie is advocating for the *Abunzi* to be “compensated” financially for their work, the sacrifices they make to be available a minimum of 3-4 hours per week (working
time lost, transport), their “professionalism” and their diligence, given the growing expertise required to carry out their duties. Provision has been made by the Ministry of Justice for payment of the Abunzi’s health insurance contributions as a form of remuneration; in practice, however, payment is not systematically made. The system should also be extended to cover contributions for each of the Abunzi’s dependents.

The payment of special allowances is another option that should be considered by the Rwandan government; as an example, if each mediator (cell and sector) received a quarterly allowance of Rwf 5000, the annual outlay would be €769 800.185 This is a very small amount in relation to the added value the mediators bring to the Rwandan justice system.

The length of the mediators’ term of office (five years) is another issue that should be explored. Five years seems too long for volunteers who work hard to ensure peace in their community without expecting anything in return. Our proposal is that the law be amended to give mediators two-year renewable terms of office. We also suggest that election of members of the mediation committees be preceded by public information/discussion sessions on the roles and responsibilities of the Abunzi and by election campaigns where the candidates could be evaluated. Currently, many mediators are “pushed”, sometimes against their will, to stand as candidates.

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185 Or Rwf 615,840,000 for a total of 25,800 cell mediators and 4992 sector mediators.
Conclusion

The payment of a per diem allowance was by far the most popular suggestion made by litigants when we asked how the functioning of the mediators could be improved. The Abunzi themselves put payment of allowances in only sixth place. Litigants' second most common suggestion was for mediators to receive training on basic legislation (Law determining the use and management of land (2005), Law on matrimonial regimes, liberalities and successions (1999)) and training on the functioning of mediation committees, conflict resolution and investigation techniques. Defrayal of the mediators' travel expenses and field visits came in third position.

The litigants' ranking was as follows: 1. Pay per diem allowances to the mediators (58 occurrences); 2. Provide ongoing training (48); 3. Cover the mediators' travel and field visit expenses (9); 4. Provide sufficient materials (6) and pay the mediators' health insurance (6); 5. Replace mediators whose work is not up to standard during their term of office (4); 6. Provide coaching for the mediators (3).

The focus group participants also put the first two suggestions above at the top of their list. After that, in order, came: 3. Provide sufficient materials (8 occurrences); 4. Cover the mediators' travel and field visit expenses (6) and Provide coaching for the mediators (6); 5. Pay the mediators' health insurance (4).

Additional suggestions made by respondents included: i) Make an office available for the mediation committees to work in; ii) provide each cell mediation committee with one or two lawyers/legal specialists; iii) interchange cell mediation committees from the same sector to ensure greater impartiality in the handling of disputes (Follow-up baseline study /Follow-up baseline study focus group).
Functioning of the mediation committees

Recommendations

By combining research and action in this study, RCN Justice & Démocratie's aim is to strengthen the functioning of the mediation committees. To this end, several concrete recommendations that address our findings are listed below. They are intended to be of use in the short and medium term to the Rwandan authorities and to any organization seeking to support the work of the Abunzi in Rwanda. In parallel, several of the ideas presented here will serve as input for the Rwandan government in the framework of discussion on the 2012-2015 strategic plan for the Justice, Reconciliation, Law and Order sector.
A. Context of the hearings / compliance with procedures

A.1 Continue technical training on the procedural steps that must be complied with during mediation hearings\(^{188}\).

Recapitulate and clarify the Law on mediation committees (2010); promote discussion on the importance of procedures;

A.2 Finalize and disseminate as widely as possible standard tools (summons forms, minutes, registers) for cell/sector mediators and executive secretaries under the supervision of the Ministry of Justice;

A.3 Provide sufficient funding to supply cell/sector mediation committees with materials: pens, paper, staplers, files, hole punchers, ink, surveyors tape, etc.

B. Quality of the Abunzi’s performance

B.1 Continue training on existing legislation, rules of application and codes of procedure in the fields in which the Abunzi regularly have to operate.

Law determining the use and management of land (14/07/2005), Law on matrimonial regimes, liberalities and successions (12/11/1999), Law on prevention and punishment of gender-based violence (10/09/2008), etc.

\(^{188}\) In January 2011, RCN Justice & Démocratie launched the project “Community justice as a driver of reconciliation” with the goal of building conflict resolution capacity at the local level – Abunzi, councils of elders (inararibonye), village committees (umudugudu), National Council of Women – in 30 of the country’s cells (funding: Directorate-General for Multilateral Affairs and Globalisation, Federal Public Service Foreign Affairs of the Kingdom of Belgium). Training will cover mediation philosophy and methodology, the basis and procedures for decision making (Abunzi) and women’s land rights. After the training sessions, round tables will be organized to enable the different categories of participant to exchange information and experiences.
Functioning of the mediation committees

Promote community discussion of these laws so as to foster personal and collective understanding and ownership; favour training with a focus on lessons learned that brings together mediators and practitioners from the relevant fields: officials from the National Land Centre/Land Committees, representatives of the National Council of Women, executive secretaries (as non-professional bailiffs responsible for enforcing decisions), Primary Court judges, etc.;

B.2 Provide specific training for mediators in investigation techniques.

This training could be delivered by members of partner bodies with relevant expertise: police officers, Primary Court judges, Supreme Court judges, officials from the National Land Centre, etc.;

B.3 Cover the travel expenses of the Abunzi so as to facilitate their field visits (funds to be available at the cell level in coordination with the decentralized units of the Abunzi National Secretariat, see E.1); alternatively, one or two additional bicycles could be put at the mediators' disposal in the offices of the cell and sector executive secretaries;

B.4 Continue or set up training on the importance of adopting a rights-based approach.

Raise mediators' awareness of the needs and difficulties typically faced by vulnerable categories of society (widows, orphans, people with disabilities), particularly in their dealings with legal matters; promote peer-to-peer training whereby more experienced mediators pass on best practices and lessons learned to new colleagues\(^{189}\);

B.5 Encourage representatives of the National Council of Women and traditional elders to attend Abunzi mediation hearings;

\(^{189}\) See Footnotes above.
B.6 Continue to raise mediator awareness of the importance of giving parties clear and comprehensible justification of the decisions they make.

Sensitize the *Abunzi* to the need for clearly documented decisions based on verified facts (measurement of parcels of land) so as to facilitate any future enforcement of decisions by executive secretaries;

B.7 Encourage regular channels of communication to be set up between mediators (cell and sector) and Primary Court judges so that the *Abunzi* not only receive feedback from the judges but are also automatically informed of court decisions (or referrals) and can improve their practices accordingly; provide joint training for mediators and judges.

C. Effectiveness of *Abunzi* mediation

C.1 Continue training on the roles of the *Abunzi* and their obligation to give priority to the search for a mediated solution, as stipulated in the Law on mediation committees (09/06/2010).

Promote discussion; include representatives from other mediation bodies (*imidugudu* councils, elders, cell and sector executive secretaries) in the training sessions along with members of the public; promote peer-to-peer training whereby more experienced mediators pass on best practices and lessons learned to their colleagues;

C.2 Raise awareness among the mediators, local authorities and population as a whole of the right of any litigant to submit a case directly to the *Abunzi* committees and, if required, support litigants who are prevented from doing so;
C.3 Encourage communication between local mediation bodies – family councils (inama y’umuryango), elders (inararibonye), village committees (komite z’imidugudu) and cell executive secretary – to ensure a coherent, time-bound procedure for the cases handled.

D. Amendments to legislation

D.1 Amend Article 4 of the Organic Law on mediation committees (2010) in order to reduce the mediators' term of office from five years to two years, renewable; organize public information/discussion sessions and election campaigns in the weeks leading up to the election of the Abunzi;

D.2 Amend the Organic Law on mediation committees so as to provide greater clarity and coherence on the procedure for making the minutes of the mediation hearings available to the parties, and on the deadline for any appeal against a decision (see Articles 22 and 26);

D.3 Amend Article 10 of the Organic Law on mediation committees so as to allow two parties in dispute living in different jurisdictions to submit their case to the mediation committee of the cell where the defendant is resident;

D.4 Amend Article 20 of the Ministerial Order on Internal Rules and Regulations of the Mediation Committee (2011) by omitting Paragraph 7 on the isolation of “any other person with information relating to the dispute”.

E. Miscellaneous

E.1 Prioritize the establishment of the “Secretariat in charge of coordinating activities of Mediation Committees” provided for in Article 31 of the Law on mediation committees (2010) so as to give effect to the coordination and governance functions of the Ministry
of Justice in the field of community justice. Appoint and train staff so that the National Secretariat has at least one representative in each district; ensure the presence of official representatives of the Secretariat in the field tasked with supervising the activities of the mediation committees, recording any breaches committed by mediators or parties during a mediation hearing and investigating these, if required; encourage synergy and sharing of information between the representatives of the Ministry of Justice, the local authorities, staff of the Access to Justice Bureau (AJB) and mediators\(^{190}\);

**E.2** Introduce special allowances to compensate mediators for the work they undertake; ensure (timely) payment of health insurance contributions for all mediators and their dependents, as provided for by the Ministry of Justice;

**E.3** Raise public and mediator awareness of the strict prohibition on any gift/payment of any nature being made by the litigants to the mediators;

**E.4** Encourage the production (by the Ministry of Justice and/or partner organizations) of radio programmes that will raise public awareness nationwide of the practices expected of mediators, the various means of resolving conflicts and the importance of taking the rights of vulnerable litigants into account;

**E.5** Continue long-term national monitoring and analysis of the functioning of mediation committees so as to help identify problems and seek out solutions and best practices in compliance with the second strategic target of the JRLO sector ”High level of satisfaction

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\(^{190}\) In this regard, one judge suggested that there should be closer supervision and better training of mediators by judges and Ministry of Justice officials; for him, it is currently the local authorities and Ministry of Local Government representatives that the mediators have most dealings with and are accountable to (Phase 2 interviews).
Functioning of the mediation committees

with Abunzi justice”; a new research study due to start in 2012 should give us a more accurate insight into the potential strengths and shortcomings of the new cell and sector mediation committees elected in 2010.

Recommendations A.1, B.1 and C.1 – which focus on Abunzi training in, respectively, procedures, legislation, and mediation techniques – should be developed by means of role play and other interactive teaching tools\(^{191}\) (consolidate knowledge through the production of information booklets and easy-to-use training manuals for wider dissemination\(^{192}\); run regular coaching sessions to consolidate and update what has been learned, etc.) so as to optimize their impact on the Abunzi.

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\(^{191}\) In early 2011, RCN Justice & Démocratie produced a 20-minute training film on the practices observed (both problematic and praiseworthy) at mediation hearings. The film will be used in training programmes run by RCN Justice & Démocratie and Rwandan Ministry of Justice officials.

\(^{192}\) To support and document its training programmes, RCN Justice & Démocratie has produced various information kits in the form of duplicated brochures that include the main laws (Law determining the use and management of land, Law regarding matrimonial regimes, liberalities and successions, Law on gender-based violence, Law on the mediation committees, and Internal Rules and Regulations). In the course of 2011, a full information kit will be distributed to 2700 mediators, Land Committee officials and cell executive secretaries. A training manual will also be given to participants in the “Community justice: driver of reconciliation” project.
SUMMARY TABLE OF FINDINGS AND RECOMMENDATIONS
## Functioning of the mediation committees

### Chapter 1

<table>
<thead>
<tr>
<th>CONTEXT OF THE HEARING</th>
<th>Observations</th>
<th>Recommendations</th>
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</table>
| **Speed of processing cases** | • The time taken to process cases is very satisfactory.  
• In one-third of cases, summonses are received less than a week beforehand, increasing the risk of parties being absent on the first day of the hearing. | • Provide sufficient funding for the materials the *Abunzi* require to carry out their duties (paper, pens, staplers, files, hole punchers, surveyors tape, etc.) in order to expedite proceedings. |
| **Opening of the mediation hearing** | • In most cases, each litigant chooses at least one of the *Abunzi* on the panel; a woman is often selected.  
• The explanations given by the *Abunzi* at the opening of a hearing vary considerably from one committee to another.  
• The main objective – that of mediation – is rarely mentioned by the *Abunzi*. | • Continue technical training on the procedures to be complied with:  
Clarify the provisions of the Organic Law on mediation committees of 09/06/2010; promote discussion on procedures; use interactive teaching tools, booklets, easy-to-use training manuals and coaching sessions to consolidate and update what has been learned. |
### Chapter 2: Quality of the Abunzi's Performance

<table>
<thead>
<tr>
<th>Observations</th>
<th>Recommendations</th>
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<tbody>
<tr>
<td>• The majority of mediation committees ask a convincing number of pertinent questions during hearings, often due to a small number of mediators being actively involved in the proceedings.</td>
<td>• Cover travel expenses so as to facilitate Abunzi field visits.</td>
</tr>
<tr>
<td>• The mediators provide a “minimum service” when it comes to field visits, which require time and money.</td>
<td>• Introduce special allowances to compensate mediators for their work; ensure (timely) payment of health insurance contributions for all mediators and their dependents.</td>
</tr>
<tr>
<td>• The fact that litigants are asked for financial contributions (e.g. for photocopying) creates a climate of mistrust, opening the door to “illegal” financing practices.</td>
<td>• Raise public and mediator awareness of the strict prohibition on any gift or payment being made or accepted.</td>
</tr>
<tr>
<td>• Participation by the public is accepted in only three-quarters of</td>
<td>• Omit paragraph 7 of Article 20 in the Ministerial Order on Internal Rules and Regulations of the Mediation Committee (2011), which requires “any other person with information relating to the dispute” to be isolated.</td>
</tr>
<tr>
<td>the mediation committees.</td>
<td>• Provide mediators with specific training in investigation techniques, delivered by officials of partner bodies with relevant</td>
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</tbody>
</table>
Functioning of the mediation committees

| cases; the Internal Rules and Regulations specify that witnesses must be isolated, which does not encourage the involvement of the community as a whole.  
- During our observations, the mediators showed remarkable impartiality when hearing the parties, but litigants were less convinced of their objectivity. | expertise: police officers, Primary Court judges, Supreme Court judges, officials from the National Land Centre. |
|---|---|
| In up to 72% of cases, witnesses failed to appear and the hearings were adjourned.  
The equal treatment given to women by the *Abunzi* is near perfect.  
Litigants who are more vulnerable from a socioeconomic viewpoint are discriminated against; witnesses brought by influential | Raise mediator awareness of the needs and difficulties faced by vulnerable categories of society (widows, orphans, people with disabilities), both in general terms and in their dealings with legal matters; promote peer-to-peer training so that more experienced *Abunzi* can pass on best practices and lessons learned to new colleagues.  
Continue or set up training on the |

**Attitude of the Abunzi to litigants and their witnesses**
parties are given more opportunity to speak.

- The respect given by the mediators to the litigants and to the public was rated more highly in 2011 (85%) than in 2009 (76%). However, cases of negligence, mockery or insults were also mentioned.

- The importance of adopting a rights-based approach.
- Encourage representatives of the National Council of Women and traditional elders to attend mediation hearings.

<table>
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<th>Chapter 3</th>
<th>EFFECTIVENESS OF ABUNZI MEDIATION</th>
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<tr>
<td>Observations</td>
<td>Mediating rather than judging</td>
<td>Continue training on the Abunzi's obligation to give priority to the search for a mediated solution.</td>
</tr>
<tr>
<td>Mediating rather than judging</td>
<td>- Mediation is attempted and encouraged by the Abunzi in only half of cases, a low score in relation to what is laid down by the law. Only a third of these mediation attempts actually succeed.</td>
<td>- Highlight the benefits of mediation: sustainable resolution of the conflict, reduction in Primary Court caseloads, savings in time and money, greater chance for women to make their voices heard.</td>
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</tbody>
</table>
## Functioning of the mediation committees

| **Litigants' viewpoint** | • Litigants whose cases drag on between local mediation bodies for too long doubt that the *Abunzi* will then be able to mediate successfully.  
• Litigants whose disputes are resolved through mediation are more likely (65%) to expect the conflict to remain settled in the long term than those whose cases were resolved by a decision (41%).  
• Three quarters of the latter would have preferred to resolve their dispute through mediation. |
| **Mediators versus judges and local authorities** | • Raise awareness among the mediators, local authorities and population as a whole of the right of any litigant to submit a case directly to the *Abunzi* committees.  
• Encourage communication between local mediation bodies and ensure a coherent, time-bound procedure for the cases handled.  
• The majority of litigants consider the Primary Courts to be better placed to settle disputes than the *Abunzi* because of their professionalism and mastery of  
• Continue training on existing legislation, rules of application and codes of procedure in the areas with which the *Abunzi* regularly have to deal: Law determining the use and management of land in Rwanda |
### Summary table of findings and recommendations

<table>
<thead>
<tr>
<th>Procedures, laws and investigation techniques</th>
<th>(14/07/2005), Law on matrimonial regimes, liberalities and successions (12/11/1999), Law on prevention and punishment of gender-based violence (10/09/2008), etc.</th>
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<tbody>
<tr>
<td>• The <em>Abunzi</em> are valued for their practical knowledge of the local context, their closeness to the community and the speed with which they reach decisions. Over two-thirds of respondents value the institutional function of the mediators, preferring them to the local authorities for settling disputes.</td>
<td>If they can justify their position or reaction by invoking the provisions of the law, the <em>Abunzi</em> are better respected and more likely to gain litigants' support.</td>
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<tr>
<td>• Thorough knowledge of current legislation is essential, particularly when it comes to disputed parcels of land.</td>
<td>• Promote community discussion of these laws so as to foster understanding and ownership.</td>
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<tr>
<td></td>
<td>• Organize training on investigation techniques.</td>
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<tr>
<td></td>
<td>• Encourage the <em>Abunzi</em> to draw on the extensive literature that exists on the subject of peaceful conflict resolution.</td>
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</table>
# Functioning of the mediation committees

<table>
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<th>Chapter 4</th>
<th>CLOSING OF THE HEARING</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Observations</td>
<td>Recommendations</td>
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| **Deliberation and decision making** | • There has been a clear improvement in the *Abunzi*’s ability to justify the decisions they make.  
• In half of all cases, litigants who contest a decision do not express their opposition in public.  
• The requirement that only the three *Abunzi* selected by the parties withdraw to make the decision is respected in less than half the cases. | • Continue raising mediator awareness of the importance of giving clear and comprehensible justification of the decisions taken.  
• Highlight the need for the community to bear witness in the case of disagreement.  
• Sensitize the *Abunzi* to the need for clearly documented decisions based on verified facts so as to facilitate enforcement by the executive secretaries, where necessary. |
| **Communication of the minutes & Appeals** | • Litigants report late receipt of the minutes in a quarter of cases; to obtain a copy, a financial “contribution” is often requested.  
• One-third of litigants intended to appeal against decisions handed down by the mediation | • Amend the Law on mediation committees so as to provide greater clarity and coherence on the procedure for making the minutes of mediation hearings available to the parties, and on the deadline for any appeal against a decision.  
• Organize ongoing training to improve the |
<table>
<thead>
<tr>
<th>Summary table of findings and recommendations</th>
</tr>
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<tr>
<td><strong>committees, and almost half of the litigants interviewed in 2011 reported that their case had gone beyond the <em>Abunzi</em> level following an appeal.</strong></td>
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<td>• Fewer and fewer disputes submitted to the <em>Abunzi</em> are ending up in the Primary Courts.</td>
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<tr>
<td><strong>committees' operating procedures.</strong></td>
</tr>
<tr>
<td>• Develop and validate standard tools (summons, minutes, registers) for use by the mediators and executive secretaries.</td>
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<td>• Encourage regular channels of communication to be set up between mediators and Primary Court judges so that the <em>Abunzi</em> not only receive feedback from the judges but are also automatically informed of court decisions; provide joint training for mediators and judges.</td>
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<th><strong>Time frame for dispute settlement</strong></th>
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<td>• The length of proceedings, both “upstream” and “downstream” from the <em>Abunzi</em> committees discourages many litigants, who are tired of the process and no longer believe mediation to be possible; over a third of respondents were involved in cases that had dragged</td>
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<tr>
<td>• Parties are often made to go through local mediation bodies before submitting their case to the <em>Abunzi</em>. It should be noted that there is no legal obligation for them to do so.</td>
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<tr>
<td>• It should be (re)explained to the <em>Abunzi</em> that they cannot send a case back to an informal mediation body; similarly, the local</td>
</tr>
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</table>
**Functioning of the mediation committees**

| on for over three months. The number of different bodies the parties need to “visit” should be reduced. | authorities have no jurisdiction to re-examine a decision delivered by the Abunzi. |

**FURTHER RECOMMENDATIONS**

- **Reduce the mediators' term of office to two years, renewable** (five years being too long for unpaid volunteers); organize public information sessions and election campaigns in the weeks leading up to the elections to avoid the mediators being “pushed” to stand as candidates against their will.

- **Amend Article 10 of the Organic Law on mediation committees** to allow two parties in dispute living in different jurisdictions to submit their case to the mediation committee of the cell where the defendant is resident.

- **Set up the “Secretariat in charge of coordinating activities of Mediation Committees”** provided for in Article 31 of the Law on mediation committees (2010) so as to give effect to the coordination and governance functions of the Ministry of Justice in the field of community justice.
APPENDICES
Functioning of the mediation committees

Appendix 1 – Summary table: geographical locations of *Abunzi* monitoring (2009-2011)

Key:

II = Monitoring of the *Abunzi* July 2010 – March 2011, 30 cells IV = Follow-up baseline study, April-May 2011, 10 cells
* = Monitoring conducted by HAGURUKA

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<th>Cell</th>
<th>Hearings observed</th>
<th>Field visits</th>
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*City of Kigali includes provinces of Kigali, Gakenke, and Musanze.*
## Appendices

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## Functioning of the mediation committees

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| TOTAL      | 109   | 42        | 151        | 16       | 2      | 18    |

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Appendix 2 – Questionnaire for litigants

follow-up baseline study – May 2011

**A. Ahakorerwa inyigo/ information on the location**

A.1. Intara/Province: .........................., Akarere/District: ..........................
    Umurenge/Sector: .........................., Akagari /Cell: ..........................

A.2. Itariki ikoreweho/Date of data collection: ..........................
    Kuva/From.................................. Kugera/to ..........................

A.3. Umukozi/ Data collector:...........................................................
    Ikigo/Organization: ..........................................................

**B. Umwirondoro w’ubazwa / Profile of the respondent**

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<td>1. Igitsina cy’ubazwa?</td>
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<td>Sex of the respondent</td>
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<tr>
<td></td>
<td>How old are you?</td>
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<td>3. Irangamimerere</td>
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</tr>
<tr>
<td></td>
<td>What is your marital status?</td>
</tr>
<tr>
<td>4. Uzi gusoma ?</td>
<td>Yego/Yes Oya/No</td>
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<td>Can you read?</td>
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1. Utarigeze ashaka/ Never married
2. Uwashyingiwe byemewe n’amatengeko/ Legally married (monogamous)
3. Abashakanye bitemewo n’amatengeko/ Common law union
4. Kubana n’abagore barenze umwe, hari mo umwe w’isezerano/ Polygamous union with legal marriage
5. Kubana n’abagore barenze umwe nta w’isezerano urimo/ Polygamous union without legal marriage
6. Ababana ku buryo bw’inshoreke/ Cohabitation
7. Umupfakazi/ Widow/widower
8. Abatandukanye byemewo n’amatengeko/ Divorced
9. Abitandukanyije/ Separated
Functioning of the mediation committees

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| 5. | **Wize amashuri angahe?**  
At what level did you complete your studies? |
|   | 1. Amashuri abanza (narayarangije: Yego/Oya)/Primary school  
(completed: yes/no) |
|   | 2. Amashuri yisumbuye (narayarangije: Yego/Oya)/Secondary school  
(completed: yes/no) |
|   | 3. Amashuri y’imyuga (narayarangije: Yego/Oya)/Vocational education  
(completed: yes/no) |
|   | 4. Kaminuza/University (narayirangije: Yego/Oya) (completed: yes/no) |
|   | 5. Ntayo nize/None |

| 6. | **Waba uri cyangwa warigeze kuba mu bagize izi nzego?**  
Are you or have you ever been a member of one of the following bodies? |
|   | 1. Ubuyobozi w’umudugudu/ w’akagali/ w’umurenge/ w’akarere/ local authorities (umudugudu, cell, sector, district) |
|   | 2. Inzego z’abagore / CNF |
|   | 3. Inzego z’urubyiruko/ NYC |
|   | 4. Intore/Intore |
|   | 5. Local defence/Community Policing |
|   | 6. Inyangamugayo ya gacaca/ Gacaca court |
|   | 7. Umwunzi/Mediator |
|   | 8. Nta na hamwe/none |

| 7. | **Undi murimo ukora**  
Occupation/position in the community? |
|   |   |

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<td>**C. Amakuru rusange/**general information</td>
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| 8. | Icyo amakimbirane yari ashingiyeho/ashingiyeho  
Subject of the dispute |
|   |   |
| 9. | **Urega/Uregwa?**  
Were you the plaintiff or the defendant? |
| 10. | **Garagaza ikijyanye n’ikibazo** |
|   |   |

112
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<th>Litigant with a case pending at the Abunzi level</th>
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<td>Indicate which of the following applies to your case.</td>
<td>2. Ufite ikibazo cyakemuwe n'Abunzi bo ku kagali ntajurire mu bunzi bo ku murenge cyangwa ngo aregere urukiko rw'ibanze/ Litigant with a case settled by the Abunzi without appeal to the sector mediation committee/Primary Court</td>
</tr>
<tr>
<td>3. Ufite ikibazo cyajuriwe mu bunzi bo ku murenge cyangwa cyaregewe mu rukiko rw'ibanze/ Litigant with a case pending at the sector mediation committee/Primary Court level</td>
<td>4. Ufite ikibazo cyakemuwe n'Abunzi bo ku murenge cyangwa n'urukiko rw'ibanze/ Litigant with a case settled by the sector mediation committee/Primary Court</td>
</tr>
<tr>
<td>5. Litigant with a case settled by the sector mediation committee/Primary Court waiting to appeal or currently under appeal.</td>
<td></td>
</tr>
</tbody>
</table>

| 10a. Abunzi bafashije impande zombi kwifatira icyemezo cyangwa bafashe umwanzuro ku kibazo zagaragaje? | 1. Kumvikanisha impande zombi/ Mediation |
| At the Abunzi level, did the mediators mediate between the two parties or deliver a decision on the case submitted? | 2. Kuzifatira umwanzuro/ Decision |

| 11. Abunzi bafashe uwuhe mwanzuro ku kibazo cyanyu? | 1. Twariyunze /We were reconciled |
| What solution did the Abunzi find for your dispute? How do you assess your situation after mediation by the Abunzi? | 2. Nahawe ibyo nashakaga byose/ I obtained all I wanted |
| 5. Nahawe ibindi mu mwanya wibyo nashakaga/ I obtained something different from what I wanted |
Functioning of the mediation committees

**D. uko abafitanye ikibazo babona ubumenyi bw’abunzi n’icyizere babafitiye**/ Knowledge and trust appraisal

<table>
<thead>
<tr>
<th>Interuro/ statement</th>
<th>Assessment</th>
<th>Sobanura niba igisubizo cyawe ari kimwe mu bisubizo kuva ku cya mbere kugeza ku cya kane</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 = Sibyo/ Disagree</td>
<td>If your answer is on the list below (1 to 4) please respond.</td>
</tr>
<tr>
<td></td>
<td>2 = Nibyo gahoro/ Partially agree</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3 = Nibyo/ Agree</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4 = Nibyo cyane/ Strongly agree</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5 = Ntabyo nzi/ Neutral</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Intangiriro y’igikorwa cy’inteko / The start of the hearing</th>
<th>Munsi y’iminsi 2 mbere/ Less than two days before</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impande zombi zifitanye ikibazo zimenyeshwa mu nyandiko kandi ku gihe umunsi wo kungwa?</td>
<td>Munsi y’icyumweru 1 mbere Less than one week before</td>
</tr>
<tr>
<td>Was written notification of the date of the mediation hearing sent to the parties in time?</td>
<td>Icyumweru 1 mbere/ One week before</td>
</tr>
<tr>
<td>1</td>
<td>2 3 4 5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Perezida w’Abunzi yasobanuye asobanura inshingano zabo n’ibigomba gukurikizwa?</th>
<th>Munsi y’iminsi 2 mbere/ Less than two days before</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did the Abunzi chairperson explain the duties of the Abunzi and how the hearing would be conducted?</td>
<td>Munsi y’icyumweru 1 mbere Less than one week before</td>
</tr>
<tr>
<td>1</td>
<td>2 3 4 5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Impande zombi zashoboye guhitamo Abunzi basuzuma ikibazo cyazo?</th>
<th>Munsi y’iminsi 2 mbere/ Less than two days before</th>
</tr>
</thead>
<tbody>
<tr>
<td>Were the parties able to</td>
<td>Munsi y’icyumweru 1 mbere Less than one week before</td>
</tr>
<tr>
<td>1</td>
<td>2 3 4 5</td>
</tr>
<tr>
<td>Question</td>
<td>1</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>---</td>
</tr>
<tr>
<td>Choose the composition of the panel that would hear their case?</td>
<td></td>
</tr>
<tr>
<td><em>Abafitanye ikibazo banze Umwunzi watoranijwe gusuzuma ikibazo cyabo?</em></td>
<td>1</td>
</tr>
<tr>
<td>Were the parties able to refuse a mediator chosen to handle their case?</td>
<td></td>
</tr>
<tr>
<td><em>Abunzi bayoboye abafitanye ikibazo mu zindi nzego bamaze kubona ko ikibazo kitari mu bubasha bwabo?</em></td>
<td>1</td>
</tr>
<tr>
<td>Did the <em>Abunzi</em> refer cases to other bodies when they themselves lacked the requisite competence?</td>
<td></td>
</tr>
<tr>
<td><em>Mu Gikorwa cy’inteko nyirizina/</em> During the hearing</td>
<td></td>
</tr>
<tr>
<td><em>Abunzi bahaye abaturage umwanya wo gutanga amakuru ku kibazo?</em></td>
<td>1</td>
</tr>
<tr>
<td>Did the <em>Abunzi</em> allow the public to give details of the dispute?</td>
<td></td>
</tr>
<tr>
<td><em>Impande zombi zahaweuburenganzira bungana mu kumva abatangabuhamya bazo?</em></td>
<td>1</td>
</tr>
<tr>
<td>Were the parties given the same rights to have their witnesses heard?</td>
<td></td>
</tr>
<tr>
<td><em>Impande zombi zahawe uburenganzira bwo kwanga abatangabuhamya batanzwe?</em></td>
<td>1</td>
</tr>
<tr>
<td>Were the parties given the</td>
<td></td>
</tr>
</tbody>
</table>
Functioning of the mediation committees

<table>
<thead>
<tr>
<th>chance to express objections to the witnesses submitted?</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Abunzi basobanuye impamvu bumvise cyangwa batumvise abatangabuhamyamya bamwe na bamwe ?</strong>&lt;br&gt;Did the <strong>Abunzi</strong> explain why certain witnesses were heard and not others?</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td><strong>Mbere y’uko bafata umwanzuro, Abunzi bagerageje guhuza impande zombi kuburyo zabona igisubizo ku kibazo cyazo?</strong>&lt;br&gt;During the hearing, did the <strong>Abunzi</strong> make a real attempt at mediating between the parties (before proceeding to any decision)?</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td><strong>Imyifatire y’Abunzi yagaragayemo kubahana no kubahisha abarebwa n’ikibazo n’abandi baturage bari aho ?</strong>&lt;br&gt;Were the <strong>Abunzi</strong> respectful to the parties and to the public?</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td><strong>Impande zombi zahawe uburenganzira bungana mu gusobanura bihagije ikibazo ?</strong>&lt;br&gt;Were the parties given the same rights to explain the case?</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td><strong>Abunzi babajije ibibazo bibafasha gusobanukirwa n’uko ikibazo giteye n’inkomoko yacyo ?</strong></td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>
**Appendices**

<table>
<thead>
<tr>
<th>Question</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did the <em>Abunzi</em> ask the questions needed to understand the facts and circumstances that led to the dispute?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inteko ya batatu yabanje kubaza ibibazo kugirango isobanukirwe n’uko ikibazo gitanye? Did the three <em>Abunzi</em> on the panel mainly ask questions to understand the dispute?</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td><em>Abunzi</em> b’abagore bagize uruhare mu gukemura amakimbirane? Did female <em>Abunzi</em> take part in the proceedings?</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td><em>Abunzi</em> bagiye ku kiburanwa mbere yo gufata umwanzuro (kureba no gusobanuza)? Did the <em>Abunzi</em> make field visits before reaching a decision (so as to carry out observation or ask questions)?</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Uburyo <em>Abunzi</em> bakemuramo amakimbirane nibwo bwiza kurusha uburyo bukoreshwa n’Abayobozi b’ibanze / inararibonye (abasheshakanguhe)? Is the <em>Abunzi</em>’s way of settling a dispute better than that of the local authorities/elders?</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Uburyo <em>Abunzi</em> bo ku kagali</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>bakoresha bakemura amakimbirane nibwo bwiza kurusha uburyo bukoreshwa n’Abunzi bo ku murenge ndetse n’inkiko z’ibanze?</th>
<th>mpamvu? / Why?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the Abunzi’s way of settling a dispute better than that of the sector mediation committee/Primary Court?</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Abunzi basuzumye vuba ikibazo bari bagejejweho?</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Did the Abunzi deal with the case submitted to them rapidly?</td>
<td>1 2 3 4 5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ibibazo bitangwa n’abagore n’ibitangwa n’abagabo byakirwa kandi bigasuzumwa kimwe mu nteko y’Abunzi?</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Do the Abunzi deal with cases submitted by men and by women in the same way?</td>
<td>1 2 3 4 5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Abunzi bita ku nyungu z’imbabare?</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Do the Abunzi take the</td>
<td>1 2 3 4 5</td>
</tr>
</tbody>
</table>

| Igihe gishize kuva ikibazo gishyikirijwe Abunzi kugeza gisuzumwe/ |  |
| Time between submission of the case to the mediation committee and opening of the hearing: |  |
| Munsi y’ibyumweru bibiri/ < two weeks |  |
| Hagati y’ibyumweru bibiri na bine/ between two and four weeks |  |
| Ibyumweru bine birenga/ > four weeks |  |

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<table>
<thead>
<tr>
<th><strong>Appendices</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>interests of the most vulnerable groups into account?</strong></td>
</tr>
<tr>
<td><strong>Hari icyo <em>Abunzi</em> basabye kugirango bakire ikibazo, batumire impande zombi, babashe kugera ku kiburanwa no kugirango batange inyandikomvugo y’umwanzuro?</strong> Did the <em>Abunzi</em> impose any (financial) conditions for registering the case, summoning the parties, making field visits or (at close of hearing) making the minutes available?</td>
</tr>
<tr>
<td><strong>Mu Gusoza Igikorwa cy’inteko / Closing of the hearing</strong></td>
</tr>
<tr>
<td><strong>Mbere yo gufata umwanzuro, <em>Abunzi</em> babanje kumenya ibyo abafitanye ikibazo bahurijeho nibyo batemeranywaho? / Before the decision was made, did the <em>Abunzi</em> ensure they had an exact understanding of the points on which the parties agreed and those on which they were in disagreement?</strong></td>
</tr>
<tr>
<td><strong>Iyo habaye ubwumvikane bw’impande zombi cyangwa se mbere yo gufata umwanzuro, <em>Abunzi</em> basoma inyandiko mvugo bagaha abafitanye ikibazo umwanya wo kugira icyo bayivugaho (bemeza, bahakana, buzua)? Did the <em>Abunzi</em> read the parties the conclusion of the mediation</strong></td>
</tr>
</tbody>
</table>
or, before a decision was made, the declarations made by the parties, and did they allow the parties to react to these declarations (by confirming, rejecting or adding information)?

<table>
<thead>
<tr>
<th>(Igihe habayeho gufata umwanzuro) Abunzi batatu bagize inteko bariherera bagafata umwanzuro?</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>(When a decision was made) Did the three Abunzi on the panel withdraw to make the decision?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Abunzi bafashe umwanzuro bakurikije ibisobanuro byatanzwe mu gusuzuma ikibazo?</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did the Abunzi make a decision with due regard to procedure (verbal decision and minutes)?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(Igihe habayeho gufata umwanzuro) Abunzi basobanuye impamvu basanze ibimenyetsyo by’umwe mu bafitanye ikibazo bifatika kurusha iby’undi, kuburyo impande zombi zasobanukiwe?</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>(When a decision was made) Did the Abunzi explain their reasons for finding certain</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Explanations/Evidence Given by One Party More Convincing Than Those Provided by the Other Party, and Did the Disputing Parties Understand the Explanation?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| **Abunzi bafashe umwanzuro-bashingiye ku itegeo?**  
(When a decision was made)  
Did the Abunzi make reference to one or more laws when making their decision? | 1 | 2 | 3 | 4 | 5 |

| Impande zombi zigaragaza zikanasobanura ibyo zitemera mu myanzuro yafashwe?  
(When a decision was made)  
Were the parties able to express and explain their disagreement with the decision? | 1 | 2 | 3 | 4 | 5 |

| Impande zombi zihabwa inyandikomvugo kugirango zishobore kuba mu gihe cyagenwe zajuririra cyangwa zaregera izindi nzego zisumbuye (Umurenge cge urukiko rw'ibanze)?  
/Were the parties given the minutes of the hearing in due time (so that, where relevant, they could submit their case to a higher authority (sector mediation committee or Primary Court))? | 1 | 2 | 3 | 4 | 5 |

| Niba utarishimiye imyanzuro yafashwe, waba warajiririye cyangwa ukaregera izindi | 1 | 2 | 3 | 4 | 5 |
### Functioning of the mediation committees

<table>
<thead>
<tr>
<th>Question</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>nzego zisumbuye? <em>(To the losing party, where relevant)</em> Have you submitted the case to a higher authority/filed an appeal against the Abunzi’s decision?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Niba harafashwe umwanzuro, wifuzaga ko habaho ubwiyunge aho kugira ngo hafatwe umwanzuro? <em>(When a decision was made)</em> Would you have preferred mediation to a decision?</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>Kubera izihe mpamvu? <em>Why?</em></td>
</tr>
<tr>
<td>Muratekereza ko ubwiyunge cyangwa umwanzuro wafashwe uzafasha mu gukemura amakimbirane mu buryo burambye? Do you think that the mediation or decision made will help settle the dispute in the long term?</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>Kubera izihe mpamvu? <em>Why?</em></td>
</tr>
</tbody>
</table>
### Uko ubona imikorere y’*Abunzi* muri rusange / Overall assessment

<table>
<thead>
<tr>
<th>Description</th>
<th>Scale 1</th>
<th>Scale 2</th>
<th>Scale 3</th>
<th>Scale 4</th>
<th>Scale 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Imyifatire n’ubushobozi by’<em>Abunzi</em> igihe bakemura ibibazo wabishyira ku ruhe rwego uhereye kuri 1(bibi) kugera kuri 5 (byiza cyane) ? On a scale of 1 (mediocre) to 5 (excellent), how would you assess the effectiveness of the <em>Abunzi</em>’s performance during the mediation hearing?</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Ubunyangamugayo bw’<em>Abunzi</em> igihe bakemura ibibazo wabushyira ku ruhe rwego uhereye kuri 1(bibi) kugera kuri 5 (byiza cyane) ? On a scale of 1 (mediocre) to 5 (excellent), how would you assess the <em>Abunzi</em>’s integrity (trustworthiness) during the mediation hearing?</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Hakorwa iki kugirango umurimo w’<em>Abunzi</em> urusheho kugenda neza ? Comments, suggestions for improving the work of the <em>Abunzi</em>?</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>
Appendix 3 – Articles 8 and 9 of Organic Law N°. 02/2010 of 09/06/2010 on organisation, jurisdiction, competence and functioning of the mediation committee.

Article 8: Competence of Mediation Committee in civil matters with regard to subject matter

Mediation Committee at the Cell level shall be competent to examine any civil case relating to:

1° lands and other immovable assets whose value does not exceed three million Rwandan francs (Rwf 3,000,000);

2° cattle and other movable assets whose value does not exceed one million Rwandan Francs (Rwf 1,000,000);

3° breach of contractual obligations in case the subject matter does not exceed the value of one million Rwandan francs (Rwf 1,000,000) with the exception of central government, insurance and commercial contractual obligations;

4° breach of employment obligations concluded between individuals if they have a value of less than one hundred thousand Rwandan francs (Rwf 100,000);

5° family cases other than those related to civil status;

6° successions when the matter at issue does not exceed three million Rwandan francs (Rwf 3,000,000).

Article 9: Competence of Mediation Committee regarding criminal cases
The Mediation Committee at the Cell level shall be competent to examine cases based on the following offences:

1° removing or displacing land and plot boundaries;

2° any kind of destruction or damage to crops in any manner if value of crops destroyed or damaged do not exceed three million Rwandan francs (Rwf 3,000,000);

3° insults;

4° defamation, except in cases where it is done by the media;

5° stealing crops or standing crops where the value of such crops does not exceed three million Rwandan francs (Rwf 3,000,000);

6° larceny where the value of the stolen good does not exceed three million Rwandan francs (Rwf 3,000,000);

7° concealment of goods stolen during larceny where the value of such goods does not exceed three million Rwandan francs (Rwf 3,000,000);

8° thefts or extortion committed by one spouse against the other, by a widower or a widow as regards assets which belonged to the deceased spouse, by descendants to the detriment of their ascendants, by ascendants to the detriment of their descendants or by allies at the same degree;

9° breach of trust in case the value of the subject matter does not exceed three million Rwandan francs (Rwf 3,000,000);

10° discovering a movable asset belonging to another person or getting it unexpectedly and keep it or fraudulently giving it to a person other than the owner, where the value of such an asset does not exceed three million Rwandan francs (Rwf 3,000,000);
11° killing or wounding without intent domestic or wild animals belonging to another person, where the value of such animals does not exceed three million Rwandan francs (Rwf 3,000,000);

12° destroying or damaging without intent, assets belonging to another person where the value of such assets does not exceed three million Rwandan francs (Rwf 3,000,000);

13° any type of assault to a person or intentionally throwing at him/her rubbish or any other thing of a dirting nature without causing injury or physical harm.
Bibliography


Functioning of the mediation committees

Legislation referred to


